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Supreme Court of the United States

OCTOBER TERM, 1902
No. 152

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK,
Plaintiff in Error

vs.

BRIGHT WILLIAMSON
Defendant in Error

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR

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EVENING POST JOB PRINTING HOUSE, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1902.

TERM No. 152.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error, vs. BRIGHT WILLIAMSON, Defendant in Error.	In Error to the Supreme Court of the State of South Carolina.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The record in this case presents a controversy between a corporation of New York and one of its stockholders resident in South Carolina, as to the *status* of the stockholder and the relative rights, duties and obligations of the corporation and its stockholders as incident to and arising out of their contracts of membership. The contest is over the contract of membership entered into in the State of New York, performable in that State and of which the laws of New York and the corporate articles and by-laws are necessarily constituent parts.

The defendant in error (plaintiff below), brought his action in the State of South Carolina, in the County of Darlington, in the Court of Common Pleas of that county, against the plaintiff in error (defendant below), seeking to recover the par value of his shares of stock in the Association. The complaint appears in the record.

Transcript, pp. 2–4.

Plaintiff in error, as defendant to said suit, duly answered the complaint and the answer appears in the record.

Transcript, pp. 4–7.

It will be noted that the answer shows that the defendant in error (plaintiff below) was a borrowing member or stockholder of the Association, and the answer recites the facts of the advance or loan to him and shows his indebtedness on account of *principal* to be the sum of $937.50.

Transcript, pp. 6, 7, Par. V. of Ans.

The reply of the defendant in error (plaintiff below) admits that he is an advanced or borrowing member of the Association and admits that he borrowed the sum stated in the answer, but denies that he is indebted in that amount, such denial being rested upon the theory that the stock of the defendant in error (plaintiff below) matured at the expiration of seventy-eight months from the date of its issue and at a time when only $58.50 per share had been paid thereon, but that notwithstanding this fact the defendant in error was entitled to withdraw such stock at its par value of $100 per share and offset the same against the amount of the loan or advance to him.

Transcript, p. 8, "Reply."

Upon these pleadings, the case was tried in the Court of Common Pleas of Darlington County,

South Carolina, "before Judge Klugh and a jury."

Transcript, p. 8.

The evidence material to be considered upon the Federal questions arising in the case and which call for determination by this Court, may be summarized as follows:

Defendant in error made application to become a member of, and stockholder in, the Eastern Association, on the 28th day of January, 1891. His application was in writing, and among other clauses contained the following:

"I hereby agree to abide by all terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said Association."

Transcript, p. 24, Exhibit "A."

It will be noted that defendant in error applied "for membership" and subscribed "for twenty-five shares of *regular* stock."

Transcript, p. 24.

It follows that his attitude as a stockholder was that of all the other stockholders in the Association, the rights and duties of stockholders being equal, mutual and reciprocal.

The whole controversy grows out of the terms of the stock certificate that was issued upon this application, and the construction of that stock certificate as determining the rights and obligations of the stockholder and of the association. The stock certificate issued by the Association to the defendant in error is set out in the record.

Transcript, pp. 25, 26.

The clause in the certificate upon which the defendant in error, as plaintiff below, based his suit reads as follows:

"The said Eastern Building and Loan Association of Syracuse, N. Y., agrees to pay said shareholder or his heirs, executors, administrators or assigns the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof."

Transcript, p. 25.

We direct attention to the fact that the laws of New York under which the association was incorporated, its article of Association and its by-laws will be searched in vain for any authority to issue stock certificates guaranteeing a fixed time for the maturity of the stock—that is, guaranteeing a fixed rate of profits or earnings upon the stockholder's investment. In this connection it will be seen that the application for stock bound the applicant to "comply with all the rules and regulations of said Association."

Transcript, p. 24.

The certificate itself also provides that "in consideration of the membership fee, together with agreements and statements contained in the application for membership in the Association, *and full compliance with the terms, conditions and by-laws printed on the front and back of this certificate, which are hereby referred to and made a part of this contract,*" the Association issues the stock and makes the agreement to pay as above quoted.

Further on in the certificate is the provision: "This certificate of shares is issued and received by the holder thereof upon the following express terms and conditions."

Transcript, p. 25.

The terms and conditions referred to, so far as we deem them material, are as follows:

"*First:* The stockholder agrees to pay, or cause to be paid, a monthly instalment of seventy-five cents on each share named in this contract, the

same to be paid on or before the last Saturday of each month, until such share matures, or is withdrawn."

Transcript, p. 25.

The Court will readily see that payments under this provision, if made for seventy-eight months only, would amount to but $58.50, but the provision itself requires payment until the share matures or is withdrawn, and therefore this clause of the certificate involves a determination of the meaning of the term "maturity" or "matures" in building and loan association practice and under the laws of New York.

"*Sixth:* At stated periods the profits arising from interest, premiums, fines and other sources shall be apportioned among the shares in good standing."

Transcript, p. 26.

"*Ninth:* The by-laws of this Association, which are attached to and endorsed hereon, *are a part of this contract*, and such by-laws and this certificate are to be construed together as part of the contract between the Association and the shareholder."

Transcript, p. 26.

"*Eleventh:* It is agreed by all shareholders of this Association that desire loans, that all money in the loan fund shall be sold at a uniform rate of ten per cent., bid as premiums on all loans."

Transcript, p. 26.

"*Fourteenth:* Any action brought against this Association shall be commenced within six months after filing proofs, and in the County of Onondaga, and State of New York."

Transcript, p. 26.

The law of New York, under which the Association was incorporated, is Chapter 122 of the Laws of

New York of 1851, as amended by Chapter 564 of the Laws of New York of 1875. Both of these laws were duly given in evidence and appear in the record.

Transcript, pp. 64, 68.

An examination of these laws will show that the Association is a purely mutual corporation, all of whose members must, under the law, stand upon a basis of perfect equality of interest in proportion to their several contributions to the capital stock of the corporation, and so it has been repeatedly held by the Courts of New York.

People *ex rel.* Fairchild *v.* Preston, 140 N. Y., 549.

Englehardt *v.* Loan Assn., 148 N. Y., 281.

These and other opinions and decisions of the courts of New York were given in evidence and duly proven upon the trial of this case.

O'Malley *v.* People's B. L. & S. Assn., reported in 92 Hun (N. Y.), at page 572; Transcript, pp. 71-74.

People *v.* Lowe, reported in 117 N. Y., at page 175; Transcript, pp. 75-82.

Concordia Savings & Aid Assn. *v.* Reed, reported in 93 N. Y., at page 474; Transcript, pp. 82-84.

Section Seven of Chapter 122 of the Laws of New York of 1851 provides:

"7. Every such corporation shall terminate except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon; or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association and not sooner, but no dividend of principal or of profits shall be made until such termination; nor until all the debts of the association shall have been paid or otherwise sufficiently provided for. *No holder of redeemed shares shall claim to be exempt from*

making the monthly payments provided in the articles of association upon the ground that by reason of losses, or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon."

Transcript, p. 65.

Under this section of the Law of 1851, it will be seen that no dividend of *principal* or *of profits* could be made or paid to members until the final termination of the Association by the actual maturity of its stock; that is, the actual attainment upon the books of the corporation, as a credit to the stock, of the par value thereof, such par value to be attained either by the monthly payments made by members until maturity, or by such monthly payments plus profits duly credited to the stock under the Articles of Incorporation and By-Laws.

In 1875 the Law of 1851 was amended so as to permit the payment of dividends, *but only out of profits.* This provision in the Law of 1875 reads as follows:

"The trustees of any association formed under the provisions of this Act may from time to time declare dividends from the earnings of the Association payable in such manner as may be provided in the Articles of Association, but no dividend shall be declared *except from the earnings of the Association.*"

Transcript, pp. 66, 69.

The Act of 1875 expressly carried forward the provision that "no holder of redeemed shares (that is shares upon which loans have been made) shall claim to be exempt from making the monthly or other stated payments provided in the Articles of Associations, upon the ground that by reason of losses or otherwise the Association has continued longer than was originally anticipated, whereby the

payments made on such shares may amount to more than the amount originally advanced with legal interest thereon."

Transcript, p. 69.

The answer of the Association alleges, and the reply of the defendant in error admits, that he is an advanced or borrowing member.

Transcript, pp. 6, 7, Par. V. of Ans. and
Transcript, p. 8, "Reply."

Under these laws the plaintiff in error was incorporated, and its amended articles of incorporation, in force at the time that defendant in error made application for membership and received his stock certificate, appear in the record.

Transcript, pp. 47–53.

These articles were subsequently further amended by an annual meeting of stockholders on May 14, 1894, and the amended articles duly executed and filed as required by the laws of New York; and these amended articles of incorporation, as adopted in 1894, constituting the present charter of the corporation, were duly given in evidence and appear in the record.

Transcript, pp. 53–63.

It was *after* the adoption of these amended articles of incorporation of 1894 that the defendant in error made application to the Association for a loan or advance to him as a member upon his stock. His formal application bears date April 1, 1895.

Transcript, p. 46.

In this application it is recited that "in consideration of said loan or advance being granted as aforesaid, I hereby agree to comply with the Articles of Incorporation, By-Laws and regulations adopted by the Board of Directors of said Association."

Transcript, p. 46.

In his formal agreement, after notice that the preference of an advance or loan had been accorded to him, the defendant in error recites that he is "the owner of twenty-five shares of the stock of the Eastern Building and Loan Association of Syracuse, N. Y."; that he has "obtained a loan from said Association of $937.50 *upon said shares* under and in pursuance of the Constitution and By-Laws of said Association, *which said Constitution and By-Laws are hereby referred to and made part of this instrument.*"

Transcript, pp. 46, 47.

The agreement then binds him to pay interest and premium on the loan or advance until the maturity of the stock pledged as collateral, and upon which the advance is made and "to keep and perform all promises and engagements entered into with said Association according to the true intent and meaning of its By-Laws and Constitution."

Transcript, p. 47.

At this time the amended articles of incorporation of May 14, 1894, were in full force and effect and contained the following provisions in relation to stock and stock maturity:

"The stock of the Association shall consist of shares of the maturity or par value of $100 each to be known as fully paid stock, classes A and B, paid up stock and instalment stock, classes A and B, which will be issued in monthly series if the Board of Directors shall so determine."

Transcript, p. 58; Amended Articles of Incorporation, Art. VIII., § 2.

"*Instalment stock shall mature and be payable when the dues paid thereon with the profits apportioned and credited thereto shall equal $100 per share.*"

Transcript, p. 58; Amended Articles of Incorporation, Art. VIII., § 3.

There is no dispute that the stock subscribed for and issued to the defendant in error was instalment stock.

Both the original and amended articles of incorporation provided that "the monthly dues per share shall be seventy-five cents."

Transcript, p. 50; Original Articles of Incorporation, Art. IX.

Transcript, p. 59; Amended Articles of Incorporation, Art. IX., § 4.

The original articles of incorporation in force at the time that defendant in error became a stockholder, provided that shares might be withdrawn by members before maturity, but the right of withdrawal was *limited to unpledged* shares and was further limited so as to prohibit the withdrawal by the member of any sum in excess of his contributions to the capital stock of the corporation with a certain proportion of the profits thereon, not in excess of the net earnings of the stock. The language of the articles of incorporation upon this point is as follows:

"Shares *which are not pledged* may be withdrawn before maturity, provided the same are in good standing and all dues and fines have been paid to date. * * * Upon such withdrawal the holder will be entitled to receive thereon the amount of the monthly instalments that have been paid with such additional interest, if any, as the By-Laws may provide, *except that the same shall not exceed the net earnings of said stock.*"

Transcript, p. 51; Original Articles of Incorporation, Art. XII.

These original articles also provided that "the amount to be paid to the owners of shares at maturity shall be $100 per share."

Transcript, p. 52; Original Articles of Incorporation, Art. XV.

These original articles of incorporation reserved an unqualified power of amendment to the stockholders at their annual meetings.

Transcript, p. 53; Original Articles of Incorporation, Art. XIX.

It was in accordance with this reserved power of amendment that the amended articles of incorporation were adopted on May 14, 1894.

Transcript, pp. 53–63.

It was under these laws and articles of association that the defendant in error became a stockholder in and member of the Association, and, as we have already shown, the stock certificate, while attempting in its face to fix a definite period of maturity, such attempt being evidently based upon an estimate of prospective profits, yet nevertheless also provided that it was issued upon specific terms and conditions, and that the by-laws printed on the back of the stock certificate constituted a part of the contract of membership. The by-laws so printed on the back of the certificates issued to the defendant in error contain the following provisions, which seem to be material upon the Federal questions arising in this case:

"The terms and conditions expressed in the certificates of stock in connection with the application for membership and the By-Laws of this Association form the contract between this Association and each shareholder therein."

Transcript, p. 31; By-Laws, Art. XIV., §§ 1, 2.

"Each share of stock shall be charged with any and all amounts that may be owing from the shareholder or his assigns to the Association, whether in dues, loans, fines, interest or premiums, and all certificates of stock in said Association shall, whether mentioned therein or not, be subject to a lien thereon to secure any such indebtedness, and the right to

deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the Association."

Transcript, p. 33; By-Laws, Art. XIV., § 13.

"All shareholders shall pay or cause to be paid a monthly instalment of seventy-five cents on each share named in their certificate *until the same shall be fully paid.*"

Transcript, p. 63, By-Laws; Art. XIV., § 14.

"If shares are withdrawn at any time before maturity the holders thereof will be entitled to receive the amount paid into the loan fund in monthly payments. After six payments have been made on stock the holder thereof can withdraw his monthly instalments that have been paid to the loan fund with interest at the rate of six per cent. per annum, seven per cent. after two years and eight per cent. after three years."

Transcript, p. 33, By-Laws; Art. XIV., § 18.

The funds of the Association were, under said by-laws, divided into two classes known as the Loan and Expense Funds. The Association, being purely mutual, was compelled, in the first instance, to take from the contributions of its shareholders a certain percentage for expenses. The remainder of the payments of shareholders into the capital stock went into the loan fund. It was these payments into the loan fund, plus the actual earnings thereon or a certain percentage of such earnings, that members were to be permitted to withdraw.

Transcript, p. 30; By-Laws, Art. XI., §§ 1, 2.

The amended articles of incorporation of 1894, as in force at the time that the advance or loan was made to the defendant in error, provided that:

"Whenever the dues or monthly instalments on any shares upon which advances or loans have been made shall, with the earnings credited thereto, amount to the face value of said shares, the same shall be redeemed and shall be cancelled, together with all securities given therewith, except where advances have been made on shares on the security thereof alone and the same has matured as aforesaid, the maturity or face value thereof shall be paid less the amount of the advance made thereon, unless the loan or advance shall have been previously paid."

Transcript, p. 61; Amended Articles of Incorporation, Art. XI, § 2.

The advance or loan to the plaintiff was made upon the collateral security of his stock certificates alone, and admittedly the dues or monthly installments paid by him on his stock, with the earnings credited thereto, do not amount to the par or face value of the stock. Nevertheless his contention is as stated in his complaint: "That by the said contract the time of the maturity of the said shares was rendered definite and the payment of the said $100 per share upon the said monthly payments being duly made was fixed and contingent upon no circumstances."

Transcript, pp. 2, 3.

The only claim of the defendant in error as to the payments made by him to the Association is "that the plaintiff paid the membership fees aforesaid, and for the full term of seventy-eight months paid to the defendant each month the sum of $18.75," this being the payment of seventy five cents per share per month upon the number of shares held by the defendant in error.

Transcript, pp. 2, 3.

We again call the attention of the Court to the fact that these seventy-eight payments of $18.75 by

the defendant in error only equaled, as the amount paid in by him upon his several shares of stock, the sum of $58.50 per share, and yet his claim is that because of the provision in the stock certificate above referred to, he is entitled to withdraw from the Association $100 per share upon his stock without regard to the earnings or profits of the Association or the rights of other members. Yet, the laws of New York, under which the plaintiff in error is incorporated, have always provided that borrowing members shall not "claim to be exempt from making the monthly payments provided in the Articles of Association upon the ground that by reason of loss or otherwise, the Association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount advanced with legal interest thereon."

Transcript, p. 65; Ch. 122 of Laws of New York of 1851, § 7.

Transcript, p. 69; Ch. 564, Laws of New York of 1875, § 1, amending § 7 of the Law of 1851.

Having carried his stock from 1891 to 1895, defendant in error became a borrower or advanced member, as already shown, in April, 1895. He did not borrow the full par value of his shares, because he gave no security, but the shares themselves upon which his payments at that time did not nearly amount to the par value of the shares. An examination of the complaint and answer will show the respective payments and indebtedness of the parties. There seems to be no dispute over the figures. The entire controversy is over the question whether the defendant in error is entitled to treat his shares as worth $100 per share at the expiration of the period of seventy-eight months from the date of their issue, and withdraw the same at par, or whether such shares only represent in value the amount paid in thereon by

the defendant in error of $58.50 per share plus earnings, if any, and less the expenses of the Association deducted upon the *pro rata* basis, or under the expense fund by-law above quoted.

Transcript, pp. 2–4, Complaint; pp. 4–7, Answer; p. 8, "Reply."

There can be no doubt that at the time defendant in error became an applicant for stock in the Association, he understood that the seventy-eight months' period when the stock was supposed to mature was an *estimated period*, based upon the prospective earnings of the corporation. Defendant in error (plaintiff below) himself testified upon this point as follows:

"Mr. Carpenter (the agent of the Association) had a statement with him of the calculations, and he made it for me and others, made it more than once, showing that it could be done. I made a rough calculation of it and it looked to me as possible. The interest was compounded monthly and it was a pretty good rate of interest they were getting, which compounded monthly. At that rate and deducting reasonable expenses it *ought to have matured the stock*. There is no question about their saying they could do it. They had a statement showing they could do so, and their literature all said they could do it and that there was no question about it. Mr. W. C. Coker took some stock in it and he made a calculation on the subject."

"Q. Did you see the calculation made by Capt. W. C. Coker?

"A. I didn't see the calculation, but it is a fact that can be mathematically demonstrated that money loaned at ten per cent. interest and payable annually—not monthly—will double itself in 7 and $\frac{11}{100}$ of a year, that is 7 years and 3 months. That is a whole sum loaned at 10 per cent. compounded annually. This was for a greater rate than 10 per cent. and compounded monthly."

Transcript, p. 18.

It is manifest from this testimony that the defendant in error at the time he subscribed for stock of the Association clearly understood that the maturity of the stock at the expiration of seventy-eight months was dependent upon the earnings of the Association, based upon the theory that the money loaned at the rate of interest that it was authorized by law to charge, in the form of "premium and interest," compounding the interest monthly, would make the book value of the stock in seventy-eight months equal to its par value. That is, his assumption and the assumption of the Association at that time was that payments of seventy-five cents per month for seventy-eight months, immediately loaned out at a given rate of interest and premium, the same to be compounded monthly, would result in earnings sufficient to make the book value of the stock upon the books of the Association equal to its par value in seventy-eight months. That this estimate was an erroneous one, and that the stock had not matured and was not upon the books of the Association at its par value at the expiration of seventy-eight months from the date of its issue, is shown by the undisputed evidence in the record.

The total number of shares held by the defendant in error was twenty-five, their par value in the aggregate being $2,500, or $100 per share. Defendant in error had borrowed from the Association, under his rights as a member and pledging his stock as collateral, the principal sum of $937.50.

Transcript, p. 28; Evidence of Nathan C. Visscher.

Upon this loan, under the contract between the parties and the articles of incorporation and by-laws of the Association, defendant in error was obligated to pay $6.25 per month as premium and interest upon the loan or advance.

The condition of the account of the defendant in error as a borrowing member at the time of the

commencement of this action was that the defendant in error was indebted to the Association in the principal sum of $937.50, having paid his interest and premium at the agreed rate of $6.25 from April 1, 1895, to August 1, 1897.

Transcript, p. 40; Testimony of Nathan C. Visscher, Qs. 21, 22 and Ans.

This witness further testifies, and his evidence is uncontradicted, that, at the time of the commencement of this action, defendant in error was indebted to the Association in the principal sum of $937.50, and for interest and premium from August 1 to January 1, 1898, five months, at $6.25 per month, $31.25; and to fines at the rate of twenty cents per share per month, for said five months, amounting to $25, making a total indebtedness on said stock loan of $993.75.

Transcript, pp. 40, 41; Evidence of Nathan C. Visscher, Qs. 22, 23, and Ans.

This witness clearly explained the status of the stock of defendant in error upon the books and under the practice of the Association.

He was asked: "When does a share mature?" He answered: "When the dues paid in thereon, plus its *pro rata* share of the earnings apportioned and credited equals $100."

Transcript, p. 40; Evidence of Nathan C. Visscher, Q. 20 and A.

He was asked: "On the 10th day of January, 1898, when this action was commenced, had the twenty-five shares of stock in question matured or reached their par value of $100 per share?" He answered: "No." He was asked: "What was the value of said shares at the commencement of this action on January 10, 1898?" He answered: "On certificate 4989, which represents ten shares of stock, the total value of said shares on January 1, 1898, was $624.30; on

certificate 4990, representing fifteen shares, the total value of the same on January 1, 1898, was $936.45." He was asked: "How do you arrive at the withdrawal value of the shares in question?" He answered: "By computing the dues paid thereon, less the expense fund of ten cents per share per month, in accordance with § 1 of Art. XI., of the By-Laws, and adding to that remainder its *pro rata* share of the earnings of the Association."

He was asked: "For how many months has plaintiff made stock payments of seventy-five cents per share upon the twenty-five shares of stock held by him in the defendant?" He answered: "For seventy-eight months," and further stated that the total amount of the stock payments made by him for the seventy-eight months on the twenty-five shares of stock (par value $2,500) amounted to but $1,462.50. He then testified that the Association had deducted from the monthly payments made upon the stock ten cents per share per month for the seventy-eight months for the expense fund of the Association as authorized by the by-laws, and that this expense fund deduction for the seventy-eight months upon the twenty-five shares of stock amounts to $195. He then shows that deducting this expense fund from the total amount of installments paid in upon the stock leaves a net balance paid upon the twenty-five shares and going into the loan fund of the Association of but $1,267.50.

He then testifies in detail as to the dividends or apportioned profits credited to the twenty-five shares of stock held by the defendant in error and represented by two stock certificates and expressly swears that the defendant Association has credited the plaintiff's shares of stock with all the dividends which have been apportioned to it since he subscribed for the same.

The evidence of Nathan C. Visscher from which these figures are taken appears upon pages 40, 41 and 42 of the transcript.

It will be seen from this undisputed evidence that

the total book or withdrawal value of the 25 shares of stock held by defendant in error on January 10, 1898, was $1,560.75, as against which he was indebted in the sum of $993.75, leaving a balance due him of $567 as the withdrawal value of his stock, assuming that upon the facts shown by this record he was entitled to withdraw the stock, which plaintiff in error denies. But instead of a judgment for this amount, the jury found a verdict in favor of defendant in error (plaintiff below) for $1,805.53, upon which a judgment for the same amount was entered on March 20, 1900, and that judgment was upon appeal affirmed by the Supreme Court of South Carolina, from which judgment of affirmation this writ of error is prosecuted.

Transcript, p. 96.

It further appears from the record in this case that the defendant in error undertook to serve notice of the withdrawal of his stock on October 27, 1897. He then claimed that he was entitled to withdraw the stock at its full par value of $2,500, but admitted that the Association was entitled to deduct the amount that he claimed he still owed the Association as an advanced or borrowing shareholder. The demand for the payment of the stock at its par value was refused by the Association on the ground that the shares of stock had not matured and reached their par value of $100, and that he had no right to withdraw his stock because the same had been pledged as collateral security for the payment of his indebtedness to the Association.

Transcript, p. 43; Evidence of Nathan C. Visscher, Qs. 47, 48, 49 and Ans.

That under the by-laws and articles of association of the plaintiff in error the defendant in error was not entitled to withdraw his stock if the same had not matured, that is was not entitled to payment of his withdrawal at the time he began

this action and obtained his judgment, is also shown by the testimony of the witness Visscher as well as by that of D. A. Pierce, Esq.

Transcript, pp. 42, 43; Qs. 38–46 and Ans., and Transcript pp. 44, 45; Evidence of D. A. Pierce

It appears from this testimony that the stock of the defendant in error was not due and payable upon withdrawal, because not reached for payment in its regular order even at the amount due as its withdrawal value under the articles of association and by-laws of the plaintiff in error, and that as pledged stock it was not subject to withdrawal.

Transcript, pp. 42 and 43; Amended Articles of Incorporation, Art. X., § 2, Transcript, p. 60.

The case of the defendant in error (plaintiff below) having been submitted upon the foregoing facts and evidence, the federal questions upon which this writ of error rests were brought into the case by the requests of the plaintiff in error (defendant below) for charges to the jury, by the charge of the Court and by the exceptions of the plaintiff in error (defendant below) to the Court's charge.

We now direct the attention of the Court to the federal questions thus raised and appearing upon the face of the record in this case.

Federal Questions.

The plaintiff in error (defendant below) at the close of the evidence, submitted to the Court fifteen specific and separately numbered requests for charges. These requests, upon their face, raise several federal questions, and we direct the attention of the Court to the requests as a whole.

Transcript, pp. 84–86; "Defendant's Requests to charge."

As presenting tersely the several federal questions arising, we quote the following requests to charge:

"I.—I charge you that the contract is to be governed and construed by the laws of the State of New York, as the contract was made there and was to be performed there.

"III.—I charge you that if you find that the defendant was incorporated under Chapter 122 of the Laws of 1851 of the State of New York and the Acts amendatory thereof, that said laws are given in this Court the same faith and credit as they have, by law or usage, in the Courts of New York, in accordance with the provisions of Section 905 of the Revised Statutes of the United States.

"V.—If you find that the defendant Association was incorporated under Chapter 122 of the Laws of 1851 of the State of New York and the Acts amendatory thereof, and as the plaintiff contracted with the defendant then I charge you that he is bound by such laws and is not exempt from making the monthly or other stated payments provided for in the Articles of Incorporation and By-Laws upon the ground of having made a fixed number of monthly payments, regardless of the fact whether such payments and the earnings of the defendant have brought theplaintiff's stock to the par value of $100 per share."

"VII.—I charge you that under the terms of the contract of membership and the contract of loan, the By-Laws and Charter, the transaction between the plaintiff and defendant does not terminate merely upon making a fixed number of payments, but only when the dues paid in by him with the profits apportioned to his shares make them equal their par value, $100 per share."

"VIII.—I charge you that as the plaintiff procured an advance or loan from the defendant, and having

assigned his stock as collateral security therefor, cannot withdraw from the Association, as he contracted to remain a member until his stock reached its par value of $100 per share."

"XII.—I charge you that as the plaintiff procured the amount borrowed under the By-laws, as he alleges, and as his contract of loan made the By-laws and Charter a part of the said contract, that he is estopped from claiming under them and against them at the same time, and that he is not exempt from making the monthly payments as they provide until the amount of dues paid in by him, plus his *pro rata* share of the profits, has brought his stock up to its maturity value of $100 per share."

"XIV.—If you find that at the commencement of this action that the defendant did not have money in its treasury applicable to plaintiff's claim, then you will find for the defendant."

"XV.—I charge you that the plaintiff was charged with notice of the provisions and requirements of the Articles of Incorporation, By-laws and the laws of New York under which the defendant was organized and conducted its operations."

See Transcript, pp. 84, 85, 86.

The Court charged the jury without regard to these requests, and the charge in full appears in the record.

Transcript, pp. 86–91; "Charge."

At the close of this charge, the trial Judge refused defendant's requests to charge in these words: "I will say that the requests that have been handed up by the defendant for me to charge, I do not deem applicable to the case in the view that I take, and they are therefore refused."

Transcript, p. 90, bottom of page.

The trial Judge in his charge, expressly told the jury that if the defendant in error (plaintiff below) was to recover, his recovery must be the full par value of his stock. "There is no ground for you to give a compromise verdict to give him a few hundred or a greater number of dollars, but you must either give the plaintiff the full amount he claims or give a verdict in favor of the defendant."

Transcript, p. 90; "Charge."

By proper exceptions to the action of the trial Judge in refusing the defendant's requests to charge, and in giving the charge that was given, the plaintiff in error (as defendant below) saved and reserved all the questions raised by its requests to charge.

See the "Exceptions" in full; Transcript, pp. 91–93.

Upon appeal to the Supreme Court of South Carolina, the judgment of the lower Court was affirmed and that Court, while having its attention called to all of the requests to charge and the exceptions in the Court below, held that no error had been committed in the trial Court, and upon the strength of an opinion rendered on a previous appeal from an interlocutory order, taken in advance of the trial of the case, refused to further consider the law questions involved and left the plaintiff no remedy except through a writ of error to this Court upon the ground that the courts of South Carolina had refused to give "full faith and credit" to the laws of New York as required by the Constitution of the United States, and had denied to the plaintiff in error "the equal protection of the laws."

In support of the contentions of the plaintiff in error, we submit the following brief:

BRIEF.

I.

UNDER THE LAWS OF NEW YORK PLAINTIFF IN ERROR IS A PURELY MUTUAL CORPORATION, WHOSE STOCKHOLDERS HAVE EQUAL, MUTUAL AND RECIPROCAL RIGHTS, DUTIES AND OBLIGATIONS, AND NO ONE OF WHOM CAN LEGALLY BE ACCORDED, IN THE STATE OF NEW YORK, ANY ADVANTAGE, PREFERENCE OR PRIORITY OVER ANOTHER.

Chapter 122, Laws of New York, of 1851, Transcript, pp. 64–68.
Chapter 564, Laws of New York, of 1875, Transcript, pp. 68–71.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.
People *v.* Lowe, 117 N. Y., 175, 180; s. c., Transcript, pp. 75–82.
Concordia Savings, &c., Assn. *v.* Reed, 93 N. Y., 474; s. c., Transcript, pp. 82–84.
O'Malley *v.* People's B., L., &c., Assn., 92 Hun (N. Y.), 572; s. c., Transcript, pp. 71–75.
Watson *v.* Columbia Mutual B. & L. Assn., 71 App. Div. (N. Y.), 498.

"A mutual savings fund and loan association is purely a co-operative society, consisting of a partnership in the profits of money as a money-maker, equitably distributed in proportion to the severalties of capital furnished by the individual members thereof."

Wrigley on Building Associations, p. 16.

"A corporation of this character is in one aspect a limited copartnership."

Coltrane *v.* Blake (U. S. C. C. A.), 113 Fed. Rep., 785, 788.
Tilley *v.* Building Assn., 52 Fed. Rep., 618, 622.
Silver *v.* Barnes, 6 Bing. (N. C.), 180; 8 Scott, 300; 37 Eng. Com. L., 335.
Robertson *v.* Homestead Assn., 10 Md., 397; s. c., 69 Am. Dec., 145.
Thompson on Bldg. Assns. (2nd ed.), §§ 3, 4.
Endlich on Bldg. Assns. (2nd ed.), § 338.

II.

DEFENDANT IN ERROR, AS A BORROWING OR ADVANCED MEMBER OF THE EASTERN BUILDING AND LOAN ASSOCIATION WHOSE STOCK HAS BEEN REDEEMED AND THE CERTIFICATES PLEDGED AS COLLATERAL TO THE ASSOCIATION IS, BY THE STATUTE LAW OF NEW YORK UNDER WHICH THE ASSOCIATION IS INCORPORATED, EXPRESSLY PROHIBITED FROM WITHDRAWING THE STOCK UNTIL ITS MATURITY.

Chapter 122, Laws of New York of 1851, § 7; Chapter 564, Laws of New York of 1875, § 1, amending § 7 of the Act of 1851; Transcript, pp. 65 and 68; *ante*, pp. 6 and 7, "State ment of the Case."

No better review of the *status* of the defendant in error as a borrowing member of the Eastern Building and Loan Association can be made than will be found in a case involving the contracts of

this association with its borrowing members heretofore decided in this Court.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227; see particularly pp. 228–231, 237–239.

Manifestly, it would not do to permit borrowing members of the Association to withdraw their contributions to the capital stock of the corporation after they had become borrowing members upon such stock, because to do so would be to deprive the association of its right to hold their stock in pledge until maturity, and to require from them as borrowing members the payment of premium and interest upon the advances to them, from which source alone can the stock of the Association be matured.

Thompson on Bldg. Assns. (2nd ed.), § 134.

The effect of the contention of the defendant in error, and the result of the decision of the Supreme Court of South Carolina, can be succinctly stated and clearly demonstrated.

The record shows that the defendant in error, upon his twenty-five shares of stock in the Association, paid in thereon, in instalments of seventy-five cents per share per month for seventy-eight months, the gross sum of $1,462.50. From this sum, under the by-laws of the Association, $195 was deducted for the expense fund, leaving the *net* amount paid in by the defendant in error upon his twenty-five shares of stock $1,267.50, which sum, under the by-laws, went into the loan fund. Subsequently, the defendant in error borrowed from the Association, or caused his stock under his membership rights to be "redeemed" to the extent of an advance to him of $937.50. This left him with a balance of actual investment, represented by his payments on his stock, of but $329.50. That is, de-

ducting the amount of the advance, $937.50, from the $1,267 payment, by him into the loan fund, and this left the Association with but $329.50 of his money in its treasury. He was having the use of the balance himself, but, of course, was paying interest and premium thereon as required by the by-laws.

This was the situation of affairs at the expiration of the seventy-eight months' period from the date of the issue of the stock. Nevertheless, without regard to the provisions of the articles of incorporation forbidding him from withdrawing his pledged stock, and without regard to the fact that he was a member of the Association, entitled as such only to his *pro rata* share of the net earnings of the Association, he brought his suit to recover the full par value of his stock, namely, $2,500, and, under the decision of the Supreme Court of South Carolina, is permitted to recover the full amount. This may be "due process of law." It certainly is not either equity or justice. It scarcely affords to the Association "the equal protection of the laws," because under this decision the rights of members of the Association as against it and of the Association as against its members, are one thing in New York, and an entirely different thing in South Carolina. It seems to us, however, that upon the facts shown by this record, there cannot be the slightest doubt that the Supreme Court of South Carolina has refused to give "full faith and credit * * * to the public acts, records and judicial proceedings" of the State of New York.

There can be no doubt that the amended articles of incorporation of the Association, as adopted in May, 1894 (*ante*, p. 8), are binding upon defendant in error as a member of the Association. These amended articles were regularly adopted at an annual meeting of stockholders in May, 1894.

Transcript, p. 53.

The record affirmatively shows that *all* stockholders were notified of said meeting, and that the amended articles were "unanimously adopted."

Transcript, pp. 53, 54, Exhibit "M."

Nearly a year afterwards, in April, 1895, such amended articles of incorporation having been in force all that period, defendant in error made application for and obtained a loan or advance, in accordance with the provisions of the amended articles.

Transcript, pp. 46, 47, Exhibits "I," "J," "K."

Transcript, pp. 38–41, Evidence of Nathan C. Visscher, Qs. 10–23, and answers thereto.

These amended articles provide that "instalment stock shall mature and be payable when the dues paid thereon, with the profits apportioned and credited thereto shall equal $100 per share."

Transcript, p. 58, Amended Articles of Incorporation of 1894, Art. VIII., § 3.

The right of a member to withdraw his stock before its maturity is a privilege and not an absolute right, and under both the original and amended articles of incorporation of plaintiff in error this right is granted to instalment stockholders only when their stock is not pledged and has not been made the basis of an advance.

"Instalment shares which are not pledged may be withdrawn before maturity, provided the same are in good standing and all dues, claims and fines thereon have been paid."

Transcript, p. 60, Amended Articles of Incorporation of 1894, Art. X., § 2.

Transcript, p. 51, Original Articles of Incorporation, Art. XII.

III.

THE STOCK OF THE DEFENDANT IN ERROR HAD NOT MATURED AT THE EXPIRATION OF THE SEVENTY-EIGHT MONTHS' PERIOD, AND THIS BEING AFFIRMATIVELY SHOWN BY UNCONTRADICTED EVIDENCE, DEFENDANT IN ERROR WAS NOT ENTITLED, UNDER THE LAWS OF NEW YORK, TO RECOVER THE PAR VALUE OF HIS STOCK FROM THE PLAINTIFF IN ERROR.

The term "maturity" of stock in a building and loan association has a fixed, definite and well settled legal meaning.

"When the payments to the Association, together with the distributive profits, after the deduction of expenses, equal the face value of the stock, then the stock is *matured*, the certificates are then called in and the holder receives the face value thereof in cash."

Thompson on Building Associations (2d Ed.), § 4, p. 9; see also § 134.
Endlich on Building Associations (2d Ed.), §§ 117, 118, 461, 463.

"When a man becomes a shareholder in a building and loan association he pays a certain sum each month until the aggregate amount paid, increased by profits, equals the maturing value of the share, which is usually $200. * * * The capital of the association is thus made up of the savings and interest upon the savings of its members, and is increased from month to month and from year to year."

New International Encyclopædia (1902), Vol. 3, p. 584, Tit., Building and Loan Assns.

"The agreement to pay $100 for each share at the end of 6½ years from the date of the certificate is expressly subordinated to the terms, conditions

and by-laws above quoted, showing the manner and conditions of payment, by indicating the only method by which the shares might be matured; that is, by the making of monthly payments thereon, until the sum of all such payments, together with the profits apportioned to the shares, should amount to $100 for each share."

Racer *v.* International B. & L. Assn. (Ind.), 63 N. E. Rep., 772; 17 Am. & Eng. Corp. Cas. (N. S.), 17.

It will be noted that the case just cited involved a stockholders' contract identical with the one in the case at bar, under a by-law which provided, as do the by-laws of plaintiff in error, that: "All shareholders shall pay or cause to be paid, a monthly installment of seventy-five cents on each share named in his or her certificate until the same shall be *fully paid*" (17 Am. and Eng. Corp. Cas. (N. S.), p. 21). This is identical with the by-law of plaintiff in error, in which the term "fully paid" occurs (Tr., p. 33, By-Laws, Art. XIV., § 14). Yet the Indiana Court reaches an exactly opposite conclusion from that reached by the opinion in the case at bar. We respectfully insist that the rule laid down in the Indiana case is the true one, supported by a great weight of authority, as we shall show, and we submit that under such circumstances this Court should reverse the judgment of the Supreme Court of South Carolina.

"The one dollar which is paid in each month is called 'dues' and when the share has reached the value of $100 it is called a 'matured share.' It represents $100 of accumulated savings." The shareholder pays one dollar each month upon his share, "until the small sums thus paid, increased by the dividends added to them by the Association amount to the sum of $100. When this amount is reached. a stockholder surrenders his share of stock and the Association pays him $100 in one sum."

Dexter on Co-operative S. & L. Assns., Ch. 3, p. 17.

It is such payment of a share until its full par value has been attained by payments made and dividends credited that constitutes "maturity" and makes the share "fully paid" under the building and loan association plan.

In the case at bar the payment of seventy-eight monthly payments of seventy-five cents per share would amount upon each share of the par value of one hundred dollars to but $58.50. Hence to require the Association to pay to each member one hundred dollars per share, unless the net earnings of the association distributable among the stockholders have brought the *book* value of the stock to its *par* value, is a manifest impossibility.

It follows that any contract among the members that their stock shall mature and be paid at its *par* value in seventy-eight months is dependent upon the *net* earnings of the Association distributable among the members upon the principle of mutuality, and if the profits are not sufficient to attain that end the contract is clearly unenforceable, because mutual corporations cannot guarantee profits to stockholders and the law of New York forbids the payment of unearned dividends.

Transcript, p. 68, Laws of New York, of 1875, Ch. 564, § 1, amending § 7 of Ch. 122, Laws of 1851.

1 Morawetz on Corp. (2d Ed.), § 436.

"All members must participate equally in the profits and bear the losses, if any, in the same proportion. This is the fundamental law of building and loan associations organized under the different statutes throughout the Union. The provisions in the borrower's notes and deeds of trust sought to be released to the effect that the shares of stock pledged to secure their payment shall reach their full par value at the end of one hundred months and the securities canceled and satisfied *regardless of the earnings of the association* is clearly subversive of the legislative scheme governing building and loan

associations and contrary to the clear letter and spirit of our statutes. * * * One who becomes a member of an association becomes chargeable with a knowledge of the provisions of its charter and by-laws and is bound by them. * * * The provisions of the by-laws, as already seen, provide for the payment of dues, interest, &c., by stockholders until such time as their stock shall mature and the stock be worth its full par value; and if the borrowers did not read the by-laws it was their fault. The association being organized under a mutual plan must treat all of its members equally, and any contract whereby one stockholder obtains a greater share of profits than another would be violative of the principle of mutuality between stockholders. *The plain principles of justice and honesty clearly forbid that one class of stockholders equally meritorious should be compelled to suffer that others may profit thereby.*"

Bertche *v.* Equitable L. & I. Assn., 147 Mo., 343; s. c., 48 S. W. Rep., 954, 958.

Schell *v.* Equitable L. & I. Assn., 150 Mo., 103; s. c., 51 S. W. Rep., 406, 407.

This is not a question of an *ultra vires* contract enforceable against one party because performed by the other. The question is of a totally different nature. The contract is not unenforceable on the ground that it is *ultra vires*, but on the ground that it is impossible for members of a purely mutual corporation to hold the corporation to an agreement made with *all* of them to pay them back their total contributions to the corporate capital at a definite time and with a definite amount of profits thereon. If the profits have not been earned, compliance with the contract is impossible, because one member cannot be robbed to pay another, and the corporation has no funds except the payments of dues by its members and the profits realized from the lend-

ing of its capital to its borrowing members from which to pay its stockholders their claims.

Englehardt *v.* Loan Assn., 148 N. Y., 281.
People *v.* Lowe, 117 N. Y., 182.
People *ex rel.* Fairchild *v.* Preston, 140 N. Y., 553, 554.
1 Cook on Corp. (4th Ed.), § 277.
Taylor on Corp. (5th Ed.), § 565.
1 Morawetz on Corp. (2d Ed.), §§ 444, 457.

"The agreement would operate to give the appellant an unjust preference, unless entered into with all other stockholders; and if entered into with all stockholders the obligation would be mutually binding upon all holders of stock. If the business of the corporation had not been sufficiently profitable to enable it to carry out the terms of the agreement, a question would be presented whether the agreement would be abandoned as to all, or enforced as against all. Corporations of this character are mutual in character. Indeed, the obligations of the shareholders are akin to those of partners in a copartnership. The plan of issuing stock containing such agreements is entirely foreign to the purposes of the corporation contemplated by the statute under which the one at bar was organized, and we cannot but regard it as of no force and effect, and it seems no injustice will befall any stockholder because of the invalidity of such an agreement. If the amount paid into the treasury of the union by way of installments and the earnings of the union equal the face value of the shares of stock, the shareholder would be in nowise benefited by an enforcement of the agreement. If, however, the amounts received from installments, together with the earnings, do not equal the face value of the stock, no shareholder could justly demand his fellow-shareholders should make up the deficiency to him, without the same obligation should

rest upon him to contribute to make good the deficiency as to each other share of stock, in which event he would lose as much as he would gain by an enforcement of the agreement."

King *v.* International, &c., Union, 170 Ill., 135; s. c., 48 N. E. Rep., 677.

No matter how it may be sought to evade the fact, the real gist of the claim in this case is that defendant in error should be repaid his contributions to the capital stock of the Association with a profit thereon amounting to upwards of *twenty per cent. per annum!!*

Such a profit is necessarily in the nature of a dividend. The payment of unearned dividends or unearned profits is expressly forbidden by the law under which the Association is incorporated.

Transcript, p. 68, Laws of New York of 1875, Ch. 564, § 1, amending § 7 of Ch. 122, Laws of 1851.

And the record shows that the earnings of the Association were not sufficient to "mature" the stock to its *par* value in seventy-eight months.

Transcript, pp. 41–43, Evidence Nathan C. Visscher, *Ante*, pp. 16–18.

"Another principle of general recognition is that a corporation cannot enter into or bind itself by a contract which is expressly prohibited by its charter or by statute, and in the application of this principel it is immaterial that the contract, except for the prohibition, would be lawful. No one is permitted to justify an act which the Legislature within its constitutional power has declared shall not be performed."

Bath Gas Light Co. *v.* Claffy, 151 N. Y., 24, 30, 31.

If the contract which the South Carolina Court in its opinion herein sustains, is to be treated as a

mere obligation for the payment of money, then the Court is forcing the plaintiff in error to pay usurious interest to the defendant in error at the expense of all other members. If, on the contrary, it is treated as it should and *must* be as a contract of corporate membership, then no matter by what term you denominate the payment of profits to appellant upon her investment it is in fact dividends.

1 Morawetz on Corp. (2d Ed.), § 457.

The term "fully paid" as applied to stock of a building and loan association has a legal meaning quite as well established as has the term "maturity."

"If the directors of a company wrongfully issue a certificate for paid up shares on account of shares which have not been paid up, their act will not bind the company and the certificate may be repudiated."

1 Morawetz on Corp. (2d Ed.), § 286.

It is only shares upon which their *par* value has been paid into the corporation that are or can be fully paid shares. Provisions in stock certificates that they are "non-assessable" will not make them fully paid.

1 Morawetz on Corp. (2d Ed.), § 427; see also *Id.*, §§ 95, 96 and 128.
Upton *v.* Tribilcock, 91 U. S., 45, 48.
2 Morawetz (2d Ed.), § 824, p. 795.
Taylor on Corp. (5th Ed.), § 522.

The only distinction between the stock of a building and loan association and that of an ordinary private corporation in this respect is that the net earnings of a building and loan association may be credited up to the stock of the several stockholders on the books of the association so as to "mature" the same; *that is, to pay the stock up to its par value,* when and when only, it becomes fully paid.

Thompson on Building Associations (2d Ed.), § 134, p. 258.

7 Thompson on Corp., §§ 8700, 8704, 8761.
Endlich on Building Associations (2d Ed), §§ 12, 14, 461, 476.

One effect of the opinion of the South Carolina Supreme Court in the case at bar is to lay down the rule that a corporation may sell its shares of the par value of one hundred dollars for little more than half their par value, and that at the same time it may contract that without regard to the profits of the corporation the stockholder may at a fixed time withdraw from the corporate capital stock the par value of the shares, no matter who suffers. Can this be the law of New York?

Compare
Taylor on Corp. (5th Ed.), § 522.
1 Morawetz on Corp. (2d Ed.), § 128.

IV.

THE SUPREME COURT OF SOUTH CAROLINA ERRS IN TREATING THE CONTRACT OF CORPORATE MEMBERSHIP BETWEEN PLAINTIFF IN ERROR AND DEFENDANT IN ERROR AS AN UNCONDITIONAL CONTRACT TO PAY MONEY AT A FIXED TIME, WHEN IT SHOULD HAVE HELD THAT DEFENDANT IN ERROR, AS A MEMBER OF PLAINTIFF IN ERROR, COULD ACQUIRE NO OTHER OR FURTHER INTEREST IN THE CORPORATE CAPITAL THAN AN EQUAL, UNDIVIDED INTEREST BASED UPON HIS CONTRIBUTIONS TO THE CAPITAL STOCK, AND HAVING DUE REGARD TO THE LIKE INTERESTS, RIGHTS AND EQUITIES OF ALL OTHER MEMBERS.

The Association, in the case at bar, cannot be dealt with as a legal entity independent of its shareholders. It is an exploded theory that a corporation

is not made up of its members. Where it is a purely mutual corporation, no one of the members can be permitted to assert and maintain a claim against the corporation which will destroy the mutuality of the company, accord to him preferences over other members in like attitude and disregard the fact that he is himself a constituent part of the corporation.

1 Morawetz on Corp. (2d Ed.), § 1; *Id.* §§ 227, 231, 234.

The Supreme Court of South Carolina, by its opinion in this case, destroys the mutuality of plaintiff in error and awards to defendant in error an undue share of the corporate capital in direct contravention of the law under which the Association is incorporated and in violation of the express provisions of its certificate of incorporation and by-laws.

The unwarranted and unauthorized issue of stock certificates, fixing a definite period of maturity contrary to the certificate of incorporation, the by-laws and the statutes under which the corporation is organized, cannot be binding upon the corporation so as to give one member an undue proportion of the corporate capital.

The capital stock being made up entirely of the contributions of its members and the issuance of a preferred stock being unauthorized, a member cannot recover back his total contributions to the capital stock with large profits thereon without first showing that such profits have been earned.

1 Cook on Corp. (4th Ed.), § 277.

The plaintiff in error is organized under Ch. 122 of the laws of New York of 1851. Section 1 of that Act shows the purely mutual nature of the corporation and *expressly* provides that members shall only be entitled to repayment of their stock "when the funds shall amount to a certain sum per share to be specified in the Articles of Association."

Laws of New York, 1851, Ch. 122, § 1, Transcript, p. 65.

The same law further provides that the corporation shall terminate "whenever all the shares thereof shall be redeemed by advances thereon or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association," and in the same connection it provides that "no dividend of *principal* or of *profits* shall be made until such termination, nor until the debts of the association have been paid or otherwise sufficiently provided for."

Laws of N. Y., 1851, Ch. 122, § 7.

The amendment of the law in 1875 permitted the payment of dividends, but only out of profits.

Laws of N. Y., 1875, Ch. 564, § 1.

"The scheme clearly was that those contributions were to continue until the society had a cash capital of $1,000 for each share. * * * Every member was to stand upon an equal footing, the debtor and the creditor members."

People *v.* Lowe, 117 N. Y., 186, 187.

But as to redeemed, that is, borrowing members, the Law of 1851 provided that even though the estimated profits of the association might not be realized, and consequently the maturity period of the stock be extended, yet the payments of dues by the members must be continued.

"No holder of redeemed shares shall claim to be exempt from making the monthly payments provided in the articles of association, upon the ground that by reason of losses or otherwise the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon."

Laws of 1851, Ch. 122, § 7.

Again, the Articles of Incorporation provide that: "In no case shall a withdrawal from the loan fund

exceed the amount of the installments paid thereto, together with the estimated amount of the earnings upon the same."

Transcript, pp. 51 and 52, Art. XII.

Then the By-laws provide that "all shareholders shall pay or cause to be paid a monthly installment of seventy-five cents on each share named in their certificate until the same shall be *fully paid*."

Transcript, p. 33, "Sec. 14."

In the light of the law under which plaintiff in error was organized and the foregoing provisions of its Charter and By-laws, can this Court sustain the proposition that plaintiff in error can enter into contracts with its stockholders by which they are guaranteed profits upon their stock without regard to the earnings, the profits and losses of the corporation?

7 Thompson on Corp., § 8761.
See 1 Cook on Corp. (4th Ed.), § 277.

To so hold is in effect to force the payment of unearned profits to stockholders, and this is in direct violation of the provisions of the Act of 1875, which amended the Act of 1851 above cited.

Laws of 1875, Ch. 564, § 1.

V.

THE SUPREME COURT OF SOUTH CAROLINA IN ITS OPINION HEREIN ERRS IN ESTABLISHING IT AS A RULE OF LAW THAT A PURELY MUTUAL CORPORATION, WITHOUT THE RIGHT TO ISSUE A PREFERRED STOCK OR CREATE PREFERENCES OF ANY KIND BETWEEN ITS MEMBERS, CAN BY THE TERMS OF A STOCK CERTIFICATE

CREATE SUCH PREFERENCES AND GUARANTEE PROFITS TO ITS STOCKHOLDERS, EVEN THOUGH NONE HAVE BEEN EARNED.

The statement of this proposition makes the decision of the Supreme Court of South Carolina herein seem so in conflict with settled principles of corporation law, that were it possible to put any other construction upon the opinion of the Court we would gladly do so. But no other construction of the opinion is possible.

THE ONLY LEGAL EFFECT OF THE DECISION IS TO LAY DOWN THE RULE THAT A CORPORATE STOCKHOLDER IS ENTITLED TO WITHDRAW HIS CONTRIBUTION TO THE CAPITAL STOCK WITH A LARGE PER CENT. OF PROFIT THEREON, BECAUSE A STOCK CERTIFICATE UNAUTHORIZED BY LAW AND THE CORPORATE CHARTER, UNDERTOOK TO GUARANTEE DIVIDENDS OR PROFITS AND A RETURN OF PRINCIPAL AT A DEFINITE TIME.

Yet the exact reverse of this doctrine has many times been held by this and other courts, and the proposition that a corporation cannot guarantee profits to its members has been assumed to be settled law.

1 Morawetz on Corp. (2d ed.), § 457.
1 Thompson on Corp., §§ 2152, 2236.
1 Cook on Corp. (4th ed.), § 277.
Taft *vs.* Hartford, &c., R. Co., 8 R. I., 310; s. c., 5 Am. Rep., 575.

Thus it is held that preferred shareholders whose dividends are guaranteed "can receive no profits when none are earned."

Boardman *v.* L. S. and Mich. S. Ry. Co., 84 N. Y., 173.
Taylor on Corp. (5th ed.), § 565.

And so it is settled law that the interest of a stockholder in a corporation is his undivided aliquot share in the capital and net earnings of the corporation.

Jermain *v.* Lake Shore, &c., R. Co., 91 N. Y., 483.
Burrall *v.* Bushwick R. Co., 75 N. Y., 211.
Plimpton *v.* Bigelow, 93 N. Y., 592, 600.

In the case at bar defendant in error is not a preferred or guaranteed stockholder, except in the same sense that all other stockholders are. His rights and equities are only the same as those of other stockholders. How, then, can his stock be paid in full at its par value out of the corporate capital stock when the undisputed proof is that the stock has not "matured" and does not represent its par value in the corporate capital? In other words, that the plaintiff in error has not assets sufficient to pay all stockholders the par value of their shares, and, therefore, defendant in error is not entitled to be paid the par value of his shares.

We have seen that the Articles of Incorporation of the plaintiff in error provide that even in cases where stockholders are entitled to withdraw, their stock being unpledged, the holder will be entitled to receive upon withdrawal only "the amount of the monthly instalments that have been paid with such additional interest, if any, as the by-laws may provide, *except that the same shall not exceed the net earnings of said stock.*"

Transcript, p. 51, Original Articles of Incorporation, Art. XII.

Do we need to seriously argue that these provisions of the Charter qualify the "terms and conditions" relating to withdrawals so as to *limit* such withdrawals to the amount paid in on stock with its net earnings? Is it not manifest that they do so

limit that right? Does it not follow that the charge of the trial Judge and the decision of the Supreme Court of South Carolina is erroneous and in contravention of the laws of New York?

The fact is that withdrawing stockholders can in no case withdraw more than the amount paid in by them with the actual net earnings thereof as a part of the capital of the association.

Transcript, p. 65, Laws of 1851, Ch. 122, § 2.

Articles of Assn., Transcript, p. 51, Art. XII.

In such cases the burden of proof is clearly upon the plaintiff.

Englehardt *v.* Loan Assn., 148 N. Y., 281.

Heinbokel *v.* National Saving, etc., Assn., 58 Minn., 340; s. c., 25 L. R. A., 215.

Texas Homestead, etc., Assn. *v.* Kerr (Tex.), 13 S. W. Rep., 1020.

The right of withdrawal is never an absolute right but always a limited and relative one, and except when the conditions authorizing a withdrawal or the repayment of a member's contributions to the capital of an association are affirmatively shown to exist, the member of a building and loan association has no more right to the repayment of his stock than the holder of stock in any private corporation would have.

Endlich on Building Associations (2d Ed.), §§ 99, 100, 102, 108.

Thompson on Building Assns. (2d Ed.), §§ 150 and 144.

A building and loan association cannot, by contract not expressly authorized by its charter and by-laws and the laws under which it is incorporated, discriminate between its members and bind itself to

pay to its members definite profits at a definite time without regard to the actual earnings of the corporation.

King *v.* International Assn., 170 Ill., 135, 142.
Bertche *v.* Equitable Loan Assn., 147 Mo., 343.
Schell *v.* Equitable Loan Assn., 150 Mo., 103.
Province *v.* Interstate Assn. (Tenn.), 58 S. W. Rep., 265.

The settled rule of law is, that no matter how unqualified may be the contract of an association with its members to pay them profits, it can only do so if profits have been earned.

1 Cook on Corp. (4th Ed.), §§ 271, 277.
1 Morawetz on Corp. (2nd Ed.), §§ 435, 436, 444, 457.
Lockhart *v.* Van Alstyne, 31 Mich., 76.

"The articles of association which showed the scheme of the organization and defined the obligations of the association and the rights of members, are binding upon each member thereof. They establish the relation between the association and the stockholder and constitute a contract between them."

Englehardt *v.* Loan Assn., 148 N. Y., 285.

"A subscriber for shares must at his peril not only ascertain the contents of the subscription paper which he signs, but also the provisions of the charter of the company or its articles of association and the general laws. * * * Every subscription for shares must necessarily refer to these and incorporate their provisions."

1 Morawetz on Corp. (2d Ed.), § 96.
2 Cook on Corp. (4th Ed.), § 493.
Taylor on Corp. (5th Ed.), § 512.
Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227, 240.

In the case at bar, the charter of plaintiff in error, its by-laws and the laws under which it is incorporated all forbid the idea that it can issue stock certificates destructive of the principle of mutuality among its members and thereby bind itself to pay to stockholders profits that it is not shown to have earned.

Transcript, p. 65, Ch. 122 of Laws of New York of 1851, §§ 1, 2, 4, 7, 11.

Transcript, p. 68, Ch. 564, Laws of New York of 1875, § 1.

Articles of Incorporation, Transcript, p. 48, Art. II; p. 50, Art. IX.; p. 51, Art. XII.; p. 52, Art. XV.; p. 52, Art. XVII.

By-Laws, Transcript, p. 27, Art. I.; p. 27, Art. II., §§ 1, 2; p. 31, Art. XIV., §§ 1, 2; p. 33, § 14 of Art. XIV.

These Articles of Incorporation and By-Laws were adopted *before* any stock certificates were issued. They will be searched in vain for any authority to issue a stock certificate binding the association to pay back a member's contribution to the capital of the corporation at a definite time and with a definite profit thereon. The issue of such certificates, as we have already seen, is unauthorized by the laws under which plaintiff in error was incorporated. It follows that the contract to pay unless profits have been earned which will permit the payment is absolutely void.

1 Cook on Corp. (4th Ed.), § 277.

King *v.* International, etc., Assn., 170 Ill., 135; 48 N. E. Rep., 677, 679.

It would seem that as between plaintiff in error and defendant in error as a borrowing member of the association, there can be no doubt of the correctness of the contentions here made. This Court and the courts of last resort in several States have recognized their soundness.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227.

Bennett *v.* Eastern B. & L. Assn., 177 Pa. St., 233; s. c., 55 Am. St. Rep., 723.

Campbell *v.* Eastern B. & L. Assn., 98 Va., 729.

Eastern B. & L. Assn. *v.* Snyder, 98 Va., 710.

Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

Daley *v.* People's B. & L., &c., Assn., 172 Mass., 533; s. c., 52 N. E. Rep., 1090; Opinion, per Holmes, *C. J.*

VI.

THE SUPREME COURT OF SOUTH CAROLINA, BY ITS DECISION AND JUDGMENT IN THIS CASE, HAS REFUSED TO GIVE "FULL FAITH AND CREDIT * * * TO THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS" OF THE STATE OF NEW YORK, AND, THEREFORE, UNDER § 1, ARTICLE IV. OF THE CONSTITUTION OF THE UNITED STATES, AND § 905 OF THE REVISED STATUTES OF THE UNITED STATES, THIS COURT IS REQUIRED TO REVISE THE JUDGMENT OF THE SUPREME COURT OF SOUTH CAROLINA AND TO AFFORD THE PLAINTIFF IN ERROR THE EQUAL PROTECTION OF THE LAWS BY RENDERING SUCH JUDGMENT HEREIN AS WILL GIVE TO THE LAWS OF NEW YORK THE SAME CONSTRUCTION AND EFFECT, AS A PART OF THE CONTRACT BETWEEN PLAINTIFF IN ERROR AND DEFENDANT IN ERROR, THAT SUCH LAWS HAVE IN THE COURTS OF THE STATE OF NEW YORK.

Constitution of the United States, Art. IV., § 1.

Revised Statutes U. S., § 905.

The Constitution substitutes for a mere rule of comity a rule of constitutional obligation, providing that full faith and credit *shall* be given in each State to the public acts, records and judicial proceedings of every other State. Under this constitutional provision the Supreme Court of South Carolina was required to give to the statutes of New York and the Articles of Association and By-Laws of the Eastern Building and Loan Association, made in pursuance of those statutes and proven as undisputed facts, constituting an integral part of a New York contract, the same faith, credit and effect given to them by the courts of New York in construing like contracts.

Cooley's Principles of Constitutional Law (2d ed.), § 203.

Chicago & Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.

The decisions of the courts of New York establishing the meaning, construction and effect of chapter 122 of the Laws of New York of 1851, and chapter 564 of the Laws of New York of 1875, were given in evidence and proven and admitted as undisputed facts in the Courts of South Carolina. It is upon these laws and decisions proven as facts, that this case must be decided.

Transcript, pp. 71–84.

O'Malley *v.* People's B., L. & S. Assn., 92 Hun (N. Y.), 572.

Englehardt *v.* Fifth Ward, etc., L. Assn., 148 N. Y., 281.

People *v.* Lowe, 117 N. Y., 175.

Concordia Savings, etc., Assn. *v.* Reed, 93 N. Y., 474.

The laws of New York above referred to were also given in evidence as undisputed facts in the case.

Transcript, pp. 64–71.

On this state of the record, we submit that the Supreme Court of South Carolina denied to plaintiff in error the "equal protection of the laws" in contravention of the XIVth Amendment to the Constitution of the United States, deprived plaintiff in error of its "liberty of contract" and of its property "without due process of law," and refused "full faith and credit" to the laws of New York.

We are aware that heretofore this Court has not passed upon the exact question upon which we now invoke its decision. Thus in the case of *Eastern Building and Loan Association* v. *Ebaugh*, this Court expressly pretermitted the determination of this question, saying upon this point: "We are not called upon, therefore, to review or reply to the very able argument of counsel for plaintiff in error advanced to show that the *situs* of the contract between the parties was New York, and that the words 'public acts' in Article IV., § 1 of the Constitution of the United States, mean the public statutes of the State."

Eastern Building & Loan Assn. *v.* Ebaugh, 185 U. S., pp. 114, 121.

It is to the consideration of this question, which we think must be expressly decided in this case and upon this record, that we now invite the attention of the Court.

The origin of the "full faith and credit" clause, embodied in § 1 of Article IV. of the Constitution, is clear, the reason for its existence manifest and the history of its adoption brief and explicit.

It has long been a settled doctrine of private international law in England and all common law jurisdictions, that the laws of one country forming an integral part of a contract entered into and performable in such country, are to be treated as a part of the contract when it comes before the tribunals of another country for enforcement, and, when properly proven, given the same meaning and

effect, the same faith and credit, that would be given them by the tribunals of the place of the contract.

Warrender *v.* Warrender, 9 Bligh., 115; 2 Cl. & F., 529, per Lord Brougham.
Bank of Augusta *v.* Earle, 13 Pet., 519.
Story: Conflict of Laws (8th ed.), pp. 36, 37, note (*a*).
Minor's Conflict of Laws, p. 5, § 4.
Robinson *v.* Queen, 87 Tenn., 445; 11 S. W. Rep., 38, 39.
Forepaugh *v.* Del., &c., R. Co., 128 Pa. St., 217; 5 L. R. A., 508, and note.
Fonseca *v.* Cunard S. Co., 153 Mass., 553.
Hilton *v.* Guyot, 159 U. S., 113.

"The first question to be considered is, what are the rules by which an English court ought to be governed in construing a foreign contract? Where a written contract is made in a foreign country, and in a foreign language, the Court, in order to interpret it, must first obtain a translation of the instrument; secondly, an explanation of the terms of art [if it contains any]; thirdly, evidence of any foreign law applicable to the case; *and fourthly, evidence of any peculiar rules of construction*, if any such rules exist, by the foreign law. With this assistance the Court must interpret the contract itself on ordinary principles of construction."

Lord Cranworth in Di Sora *v.* Phillipps and others, 10 H. of L., 624, 633.

"It may be laid down as the settled doctrine of public law that personal contracts are to have the same validity, interpretation and obligatory force in every other country which they have in the country where they were made."

2 Kent's Com., *458.
Cooper v. Waldegrave, 2 Beav., 282.

Thornton *v.* Dean, 19 So. Car., 583, 589.
Smith *v.* Elliott, 39 Tex., 202, 211.
Liverpool Steam Co. *v.* Phœnix Ins. Co., 129 U. S., 397, 448.

It will scarcely be denied that such was the doctrine of the English law at the time of the American Revolution and when the "Articles of Confederation," and, subsequently, the "Constitution of the United States," were framed.

Robinson *v.* Bland, 1 W. Bl., 234, 256, 258.
Lloyd *v.* Guibert, 6 B. & S., 100.
Peninsular, etc., Co. *v.* Shand, 3 Moore, P. C. C. (N. S.), 272; 11 Jur. (N. S.), 771; 13 W. R., 1049; 12 L. T. (N. S.), 808.
Ellis *v.* McHenry, 23 L. T. (N. S.), 862; 6 L. R. C. P., 228; 40 L. J. C. P., 109; 19 W. R., 503.
Don *v.* Lippman, 5 C. & F., 1.
Huber *v.* Steiner, 2 Scott, 304; 2 Bing. N. C., 202; 1 Hodges, 206.
Ferguson *v.* Fyffe, 8 C. & F., 121.

In order to secure this faith and credit to foreign laws, it was only necessary in the courts of England to prove such laws as matters of fact, and by evidence to establish the construction and effect of such laws at the *situs*, of the contract of which they formed a part.

Mostyn *v.* Fabigas, Cowp., 174;
Crawford *v.* Witten, Lofft., 154; 1 Dougl., 4 *n.*
Male *v.* Roberts, 3 Esp., 163 (Eldon).
Nelson *v.* Bridport, 8 Beav., 527; 10 Jur., 871.

After such proof of a foreign law and its interpretation was made, the English courts held themselves bound by it, and it was not a question of fact for a

jury but of law for the court as to the meaning and effect of the foreign law in the place of contract and of its enactment.

Copin *v.* Adamson, 9 L. R. Exch., 345; 31 L. T. (N. S.), 242; 43 L. J. Exch., 161; 22 W. R., 658.

Such being the rule of private international law between different independent nations when the American colonies came to form themselves first into a confederation of states and later into "a more perfect union," in which many of their rights of sovereignty and independence were merged, it was but natural that they should first recognize and then extend and establish as a part of their fundamental law that rule which previously had been a matter of international comity.

Hence we find in the Articles of Confederation that part of the rule relating to the records, acts and judicial proceedings of the different States, and the faith and credit to be accorded them in the other States was thus expressed: "Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State."

Articles of Confederation, Art. 4, § 3.

Manifestly this clause in the Articles of Confederation required full faith and credit to be given in all States (*a*) to the public records of each State, (*b*) to the public statutes or acts of each State, and (*c*) to the judgments and judicial proceedings of each State. However, like nearly all other provisions of the Articles of Confederation, it stopped short of the full accomplishment of its apparent purpose by not providing *a rule of evidence* which would be operative in and binding upon all the States of the confederation, sufficiently *authenticating* State records, acts and judicial proceedings. Hence when the Constitution of the United States was framed the clause in question was enlarged and extended so as

to read as follows: "Full faith and credit *shall* be given in each State to the *public acts*, records and judicial proceedings of every other State. And the congress *may* by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof."

Const. U. S., Art. IV., § 1.

In the language of Judge Cooley:

"By this provision a rule of comity becomes a rule of constitutional obligation. It also becomes a uniform rule, and the common authority is empowered to pass laws whereby the courts may govern their action in receiving or rejecting the evidences presented to them of the public acts, records and judicial proceedings of other States. Nor is this of more importance to the States as such than to those whose individual interests may be involved or affected; and, indeed, the interests involved are usually private and individual rather than public.

"The full faith and credit to which the public acts, records and proceedings are entitled in other States is the same faith and credit to which they are entitled in the State whose acts, records and judicial proceedings they are."

Cooley's Principles of Const. Law (2d Ed)., p. 203.

And such is the meaning of the clause as construed by the late Chief Justice Waite and his associate Justices when he presided over the deliberations of the Supreme Court.

"Without doubt the constitutional requirement of Article IV., § 1, that 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State,' implies that the public acts of every State *shall be given the same effect by the courts of another State that they have by law and usage at home.* * * * Whenever it becomes necessary, under this requirement of

the Constitution, for a court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, *the law of that State must be proved as a fact.*"

Chicago & Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.

It has been suggested (*a*) that the term "Public Acts," as used in the constitutional provision, does not mean legislative acts or statutes, and it has also been suggested (*b*) that § 905 of the Revised Statutes of the United States not having provided the *effect* to be given in each State to the public acts of other States, no federal question arises out of a failure to give to such public acts full faith and credit—that is, to give them the same effect that would be given them in the State of their enactment. It has also been suggested (*c*) that as the statutes of a State have no extra-territorial effect, a failure of the courts of one State to apply a statute of another State to a contract under consideration in such courts and which was made and to be performed in the State enacting the statute in question, and under and in accordance with such statute, involves no federal question. In short, it has been denied that effect must be given by the courts of one State to the statute of another State entering into and forming an integral part of a contract made and performable in the State where the statute was enacted, and that the same effect must be given to the statute as a part of the contract that would be given to it in the State of its enactment.

To these several questions, in their order of statement, we now address ourselves.

THE TERM "PUBLIC ACTS"—ITS MEANING: *The term "public acts" in Article IV., § 1 of the Constitution of the United States refers to the legislative enactments or public statutes of the several States.*

At the time of the adoption of the Constitution of

the United States, the term "public acts" had a well settled meaning. It always referred to public statutes as distinguished from private statutes. "A general or public act is a universal rule that regards the whole community."

1 Blackstone's Commentaries, *p. 86.

On May 17, 1787, in the constitutional convention Mr. Randolph offered a form of a proposed Government in which the word "acts" was used.

"6th. Resolved, that each branch (of the legislative body) ought to possess the right of originating *acts*."

Eliot's Debates (2d Ed.), V. 5, pp. 126, 127 (Madison's Papers).

Again: "The 6th resolution (of May 17, see above) stating the cases in which the national Legislature ought to legislate was next taken into discussion. On the question whether each branch should originate *laws* there was a unanimous affirmative without debate."

Eliot's Debates, V. 5, p. 139 (Madison's Papers).

So Article VI. of Pinckney's proposed constitution in the last paragraph has

"All *acts* made by the Legislature of the United States, pursuant to this Constitution, and all treaties * * * shall be the supreme law of the land, and all Judges shall be bound to consider them as such in their decisions."

Eliot's Debates (2d Ed.), V. 5, p. 131 (Madison's Papers).

In June, 1787, during the debates in the constitutional convention Mr. Pinckney moved:

"That the national legislature should have authority to negative all *laws* which they should judge to be improper." He argued that such a uni-

versality of the power was indispensably necessary to render it effectual; that if the States were left *to act* of themselves in any case, it would be impossible to defend the national prerogative, however extensive they might be on paper; that the *Acts* of Congress had been defeated by this means.

Mr. Madison seconded the motion and said:

"He could not but regard an indefinite power to negative legislative *acts* of the States as absolutely necessary to a perfect system * * *. The States would, of themselves, pass no operative *act* any more than one branch of a legislature. * * *

"Mr. Gerry could not see the extent of such power and was against every power that was not necessary. He thought a remonstrance against unreasonable *acts* of the States would restrain them."

Eliot's Debates, V. 5, pp. 170, 171, 172.

Again: Mr. Patterson, among others, moved the following proposition:

"5. Resolved, that a Federal judiciary be established * * * to have authority to hear and determine, in all cases which may arise, any construction of any treaty or treaties, or which may arise on any of the *acts* for the regulation of trade * * *.

"6. Resolved, that all *acts* of the United States in Congress, made by virtue and in pursuance of the powers hereby * * * [conferred] shall be the supreme law of the respective States so far as those *acts* or treaties shall relate to said States * * *"

Eliot's Debates, V. 5, p. 192.

That the term "public acts" means legislative acts or public statutes is clearly shown by the form in which Art. IV., § 1 of the Constitution was first reported to the Constitutional Convention of 1787. The clause then read "full faith and credit shall be given in each State as to the *acts of the Legisla-*

ture," &c. This was subsequently shortened as a mere matter of style to the words "public acts," meaning, beyond doubt, acts of the Legislature, or statutes.

That the term "public acts," in Article IV., § 1 of the Constitution of the United States, has the meaning here contended for is, we think, clear upon both reason and authority.

Unity *v.* Burrage, 103 U. S., 447, 454.

"The words '*act* of the Congress' are as strong and unequivocal as *statute* of the Congress."

Story, *J.*, in United States *v.* Smith, 2 Mason, 143, 151.

"Acts are general or special, public or private. All legislative acts are laws, and if not laws then they are not acts of legislation."

People *v.* Tiphaine (N. Y.), 3 Parker's Cr. Rep., 244; s. c., 13 Howard's Prac. (N. Y.), 76, 77.

So much for the meaning of the term "public act." Let us now consider the next contention stated above.

CONGRESSIONAL ACTION WAS NOT REQUIRED OR NECESSARY TO MAKE OPERATIVE THE CONSTITUTIONAL PROVISION THAT "FULL FAITH AND CREDIT *shall* BE GIVEN IN EACH STATE TO THE PUBLIC ACTS * * * OF EVERY OTHER STATE."

Article IV., § 1, of the Constitution of the United States originated in the Committee of Detail in the Constitutional Convention, and in its original form was reported by that committee as follows: "Full faith shall be given in each State *to the acts of the Legislatures* and to the records and judicial proceedings of the courts and magistrates of every other State."

"The Growth of the Constitution," Meigs, p. 254.

2 Madison's Papers, 1240.

When the clause thus reported by the committee of detail came before the Federal Convention for action, Mr. Randolph moved the following proposition: "Whenever the act of any State, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other States as full proof of the existence of that act; and its operation shall be binding in every other State in all cases to which it may relate and which are within the cognizance and jurisdiction of the State wherein said act was done."

3 Madison's Papers, 1449.

At the same time Mr. Gouverneur Morris moved the following proposition on the same subject: "Full faith *ought* to be given in each State to the public acts, records and judicial proceedings of every other State, and the Legislature shall by general laws determine the proof and effect of such acts, records and proceedings."

These proposed forms of the clause in question, together with Article XVI. of the report of the committee of detail, were then referred to a committee consisting of Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Wilson and Mr. Johnson.

3 Madison's Papers, 1449.

This committee reported the clause back to the Federal Convention as Article XVI. in the following form: "Full faith and credit *ought* to be given in each State to the public acts, records and judicial proceedings of every other State; and the Legislature shall, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect which judgments obtained in one State shall have in another."

It is manifest that at this time the committee intended to provide expressly, *first*, how such public acts, records and judicial proceedings should be proven, and *second*, the effect which judgments ob-

tained in one State should have in another, and that they did not then contemplate making an absolute requirement upon the courts of one State to give to the public statutes of another State the same meaning and effect that such statutes would have in the State of their enactment. This is shown by the fact that in the draft of the clause as reported the word "*ought*" is used instead of the word "*shall*" in the clause as it was finally adopted.

3 Madison's Papers, 1479.

The clause came up for consideration again in the convention of September 3, 1787, and a debate then occurred as to whether the meaning and effect of the provision should be limited by certain suggested changes *so as to restrain its meaning and effect to judgments and judicial proceedings.*

3 Madison's Papers, 1480, 1481.

"Thereupon, on motion of Mr. Madison, the words '*ought to*' were struck out and '*shall*' inserted; and 'shall' between 'Legislature' and 'by general laws' struck out and 'may' inserted *nem con.*"

3 Madison's Papers, 1841.

Thereafter the "committee on style" reported the clause in question as it now stands in the Federal Constitution.

"The Growth of the Constitution,"
Meigs, 256.

Manifestly, the purpose of the framers of the Constitution was to require full faith and credit to be given to the public statutes of each State when pleaded and proven in the courts of a sister State in any case where rights had been established under such statutes, either by way of contract or otherwise, in the State passing the statute in question; and going a step further, the Constitutional Convention, after changing the term "ought" to the term "shall" so as to make the requirement of full faith and

credit peremptory so far as the public statutes of sister States are concerned, authorized Congress to determine, first, how such public acts, records and judicial proceedings shall be authenticated, and, second, what effect shall be given in the courts of one State to the judgments and judicial proceedings of another State.

Congress is without power to change the meaning or qualify the effect of the first paragraph of Article IV., § 1, of the Constitution, and, consequently, has never attempted to do so.

"The clause of the Constitution propounds three distinct objects: First, to declare that full faith and credit shall be given the records, &c., of every other State; secondly, to prescribe the manner of authenticating them; and, thirdly, to prescribe their effect when so authenticated. The first is declared and established by the Constitution itself and is to receive no aid, nor is it susceptible of any qualification by Congress. The other two are expressly subjected to the legislative power."

2 Story on the Constitution (5th Ed.), § 1308.

Section 905 of the Revised Statutes of the United States establishes the effect to be given to the judgments of sister States, and provides for the authentication and proof of those public acts to which Article IV., § 1, of the Constitution as adopted requires that full faith and credit *shall* be given.

It surely must have been the intent of Congress to give effect to the constitutional provision in question, as applied both to judgments and to public acts, by providing as to the effect of the judgments and as to the manner of authenticating and proving the acts. The acts of a sister State being thus authenticated and proven, it follows from the explicit language of the Constitution itself that full faith and credit must be given to such acts, and the term "full faith and credit" cannot reasonably be interpreted as having any other meaning than that in

the construction of a contract or a corporate charter of which a statute of the State of the contract or corporate *situs* is an integral part, such statute, when properly pleaded and proven, must be given the same force and effect by the Court considering the contract and the statute, that would have been given to such statute in the courts of the State where the contract was made and to be performed and the statute enacted.

"'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.' The language is positive and declaratory, leaving nothing to future legislation."

2 Story on the Constitution (5th Ed.), § 1309.

Whether in any case this doctrine should be extended, it is not necessary for us to discuss at this time or for this Court to determine now, but to deny the application of the Constitutional provision for the purpose here indicated, is to make it possible for the courts of any State to practically nullify corporate membership contracts entered into in another State and valid under the public acts of such State, even though such contracts be made and performable in the State enacting such statutes, and be themselves regulative of the status of the corporation and its members.

"I apprehend that it is now established by the law of this country that one who becomes a shareholder in a foreign company, and therefore and thereby a member of that company, such company existing in a foreign country and subject in all things to the law of that country, himself becomes subject to the law of that country, and to the articles or constitutions of that company construed and interpreted according to the law of that country in all things and as to all matters and all questions existing or arising in relation to or connected with the acts and affairs and the rights and liabilities of

such company and its members severally and collectively."

Kelly, *C. B.*, in Copin *v.* Adamson, L. R., Exch., 345, 349.

We do not deny that Congress *might* legislate as to the effect to be given to the statutes of one State when proven in another State, and by such legislation it is possible that for some purposes *extra-territorial* effect might be given to such statutes.

But Congress could not by any enactment constitutionally prevent State statutes from being given "full faith and credit" in other States. It might add to the constitutional provisions, but it cannot abridge the constitutional right. It might define the term "full faith and credit," but not having done so the common law meaning of the term prevails, and that meaning is that the same effect must be given to the statute of a sister State regulating the contract of membership of a corporate shareholder in a corporation of such sister State that the courts of the sister State have given to the statute.

Copin *v.* Adamson; Copin *v.* Strachan, 9 L. R. Exch., 345.

Canada So. R. Co. *v.* Gebhard, 109 U. S., 527.

Fish *v.* Smith, 73 Conn., 377.

Washington Central Bk. *v.* Hume, 128 U. S., 195, 207.

Coghlan *v.* S. Car. R'd. Co., 142 U. S., 101, 109.

Wayman *v.* Southard, 10 Wh., 1, 43.

It is not permissible for a State court to nullify a contract of corporate membership in another State by the avowal that comity does not require it to give effect to a statute of the sister State that forms a part of the very contract itself.

It is just here that the rule of "comity" has been

superseded and that "the rule of constitutional obligation" becomes operative.

Huntington *v.* Attrill, 146 U. S., 657, 666, 684, 685, 686.
Whitman *v.* Oxford Nat. Bk., 176 U.S., 559, 564, 565.
McCullough *v.* Virginia, 172 U. S., 102, 116, 117.
Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.

It must be conceded by opposing counsel that even in the State of South Carolina the rule of "comity" has always been that the "full faith and credit" to be given to the statute of a foreign jurisdiction forming a part of a contract, and properly proven as such, is to apply such statute in accordance with its terms and its settled construction in the jurisdiction of its enactment.

Fitzsimmons *v.* Guanahani Co., 16 So. Car., 195.
Thornton *v.* Dean, 19 So. Car., 583, 589.
Pegram *v.* Williams, 4 Rich. (So. Car.), 219.
Belcher *v.* Commissioners, 2 McCord (So. Car.), 23.
McCandlish *v.* Cruger, 2 Bay (So. Car.), 377.
Touro *v.* Cassin, 1 Nott. & McC. (So. Car.), 173.

"The principle is that the *lex loci contractus* is to be observed in deciding on the nature, validity and construction of the contract."

Levy *v.* Boas, 2 Bailey (So. Car.), 219.
Ayres *v.* Audubon, 2 Hill (So. Car.), 601.

"It has been repeatedly held by this Court and the United States Supreme Court that every contract made embodies the law governing such con-

tract as much as if so stipulated in the contract in express terms."

Adler *v.* Cloud, 42 So. Car., 272, 291.

Therefore the statutes of New York as given in evidence in this case and their application by the Courts of New York as proven in this case, were a part of the contract between the Eastern Building & Loan Association and its stockholder, Williamson, and as such must be given "full faith and credit" by the Courts of South Carolina, not as a matter of comity and favor, but as a matter of constitutional right invoked and insisted upon.

Chicago, etc., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615.

Same Case, first appeal, 108 U. S., 18, 22.

And the right of the parties to contract under and subject to the laws of New York, neither the Legislature nor the Courts of South Carolina can abridge or deny.

R. S. U. S., § 1977.

Yick Wo. *v.* Hopkins, 118 U. S., 356, 369.

Santa Clara Co. *v.* Southern Pac. R. Co., 118 U. S., 394, 396.

On the other hand the Courts of South Carolina cannot refuse to enforce the contract according to the laws of New York without violating the Fourteenth Amendment by destroying the liberty of contract and denying to plaintiff in error the "equal protection of the laws."

Allgeyer *v.* Louisiana, 165 U. S., 578.

Holden *v.* Hardy, 169 U. S., 366, 391.

This brings us to the third contention already stated, namely, that we are seeking to give extra-territorial effect to the laws of New York and that

this the Courts of South Carolina are not required to do.

We concede that State statutes have no extra-territorial effect.

THE QUESTION IS NOT ONE OF THE EXTRA-TERRITORIAL EFFECT OF A STATE STATUTE IN ANOTHER STATE. IT IS WHETHER A COURT OF ONE STATE CONSTRUING A CONTRACT OF CORPORATE MEMBERSHIP MADE AND PERFORMABLE IN ANOTHER STATE CAN REFUSE TO GIVE TO A STATUTE OF THE STATE OF THE CONTRACT THE SAME MEANING AND EFFECT, AS A PART OF THE CONTRACT OF MEMBERSHIP, THAT WOULD BE GIVEN TO IT IN THE STATE OF THE CORPORATE *situs*.

We insist that in the case at bar the statutes of New York and the articles of Association and By-Laws of the Eastern Building and Loan Association enter into and form an inseparable part of the contract of corporate membership and that full faith and credit can only be given to the laws of New York by giving to them the same effect in connection with the contract of membership that has been given them by the courts of New York.

Glenn *v.* Garth, 147 U. S., 360.
Canada So. R. Co. *v* Gebhard, 109 U. S., 527, 537.
Chase *v.* Curtis, 113 U. S., 452, 458.
Whitman *v.* Oxford Nat Bk., 176 U. S., 559, 564, 565.
Carpenter *v.* Strange, 141 U. S., 87, 103.

"Whenever a court of one State is required to ascertain what effect a public act of another State has in that State, the law of such other State must be proved as a fact."

Lloyd *v.* Matthews, 155 U. S., 222, 227.

And when so proven, as in the case at bar, then not only the validity, but the construction and effect of the law must be determined by the State court in accordance with the Constitution and judicial decisions of the State by whose Legislature it was enacted.

Lloyd *v.* Matthews, 155 U. S., 222, 227.
Chicago, etc., R. Co. *v.* Wiggin's Ferry Co., 119 U. S., 615.

In no other way can full faith and credit be given to the "public acts" and "judicial proceedings" of "another State," as required by § 1 of Art. IV. of the Federal Constitution.

We submit that any decisions, or any *dicta*, in any opinion, of this Court not in harmony with these views cannot be sustained as against the foregoing line of reasoning based upon the history of the constitutional provision in question and the plain meaning of that provision *in the light of the prior common law.*

We have in the case at bar proven the "public acts" and "judicial proceedings" of the State of New York in strict conformity with § 905 of the Revised Statutes.

We have thereby complied with the rule laid down in the *Wiggins Ferry* cases and in *Lloyd* v. *Matthews*.

We have invoked the "full faith and credit" clause of the Federal Constitution in the State Courts and been told, in substance, that the laws of New York, even though they form a part of a contract made and performable in New York, will not be treated as a part of the contract by the courts of South Carolina. This is not a "construction" of these laws, but a denial of their validity as parts of the contract and a refusal to give them *any* effect, and, therefore, this Court has jurisdiction to review this case upon its merits.

May it not well be queried in this connection whether a State may, through judicial proceedings,

take possession of the assets of a solvent foreign corporation in its limits by suit and judgment against the corporation, and distribute such assets or their proceeds among the stockholders of the foreign corporation resident in such State, in such a manner as to give to such resident stockholders more than their paid in or *pro rata* share of the corporate capital stock, thereby discriminating against the corporate stockholders in other States having equal rights and interests in the corporation and its capital stock and assets?

Compare:

Blake *v.* McClung, 172 U. S., 239, 247.
Blake *v.* McClung, 176 U. S., 59, 63, 65, 68.

The Judiciary Act of 1789 provided that:

"The laws of the several states, except where the Constitution, treaties or statutes of the United States otherwise provide, shall be regarded as rules of decision in trials at common law, in courts of the United States, in cases where they apply."

R. S. U. S., § 721.

It will be noticed nothing is said as to the effect of such laws or the faith and credit to be given them. It is merely provided that they shall be "rules of decision," a far less definite term than the constitutional language which is that "full faith and credit *shall* be given in each State to the public acts * * * and judicial proceedings of every other State."

But this Court has uniformly held that as "rules of decision" State statutes establishing rules of property can be given full faith and credit only by giving them the same construction, interpretation and effect which they have in the State of their enactment.

Walker *v.* State Harbor Comrs., 17 Wall., 648, 651.
Randall *v.* Brigham, 7 Wall., 523.

Allen *v.* Massey, 17 Wall., 351.
Ohio *v.* Frank, 103 U. S., 697.
Green *v.* Neal's Lessee, 6 Pet., 291, 299.
Bucher *v.* Cheshire R. Co., 125 U. S., 582.
Hartford Ins. Co. *v.* Chicago, &c., R. Co., 175 U. S., 100.

Carrying the analogy a step farther, this Court has held in many cases that the construction of a State statute by the Courts of the State of its enactment forms a part of the statute and will be followed, no federal question being involved, even though this Court does not agree with such construction.

Forsyth *v.* Hammond, 166 U. S., 518.
Board *v.* Louisiana, 179 U. S., 622.
Jaffray *v.* McGehee, 107 U. S., 361, 365.
Brashear *v.* West, 7 Pet., 608.
May *v.* Tenney, 148 U. S., 60, 64.
Louisiana *v.* Pilsbury, 105 U. S., 278, 294.
South Branch Lumber Co. *v.* Ott, 142 U. S., 622, 628.

And this principle is so rigidly observed that where the same statute has been enacted in different States and the Courts of such States differ in their construction of it, this Court will follow the different constructions in cases coming from the different States, even though the statute thus becomes "a different law in one State from what it is in the other."

Union Bank of Chicago *v.* Kansas City Bk., 136 U. S., 223, 235.

And so this Court will change its construction in obedience to later decisions of a State court of last resort changing the construction of a statute of

such State, when no vested rights or contract obligations will be affected thereby.

Leffingwell *v.* Warren, 2 Bl., 599.
Wade *v.* Travis Co., 174 U. S., 499, 508.
Bauserman *v.* Blunt, 147 U. S , 647.
Moores *v.* Bank, 104 U. S., 625.

So the construction as to the powers of a corporation placed by the highest Court of a State upon a State statute chartering it is conclusive in this Court.

Smith *v.* Kernochen, 7 How., 198.

And in like manner the construction by the State courts of a clause regulating the liability of stockholders in a State statute authorizing the formation of corporations will be followed by this Court.

Flash *v.* Conn., 109 U. S., 371.

"It is also settled that the laws which subsist at the time and place of the making of a contract and where it is to be performed, *enter into and form a part of it*, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its *validity*, CONSTRUCTION, DISCHARGE and enforcement."

Mr. Justice Swayne in Von Hoffman *v.* City of Quincy, 4 Wall., 535, 550.

These doctrines of this Court all rest upon the principle for which we contend, namely, that in order to give full faith and credit to a statute of one jurisdiction when it comes before the courts of another jurisdiction, it must be given the same effect that it has by law or judicial interpretation in the State of its enactment; and as the Constitution says full faith and credit *shall* be given in each State to the public acts and judicial proceedings of every other State, this can only be done in a case where a contract made and to be performed under the laws of a sister State is involved, by treating those laws

as a part of the contract and giving them the same force and validity as a part of such contract that they would have at the *situs* of the contract. Nothing short of this is "full faith and credit," and congressional action to determine what full faith and credit means would be a work of supererogation.

And in this connection we also urge upon the Court the proposition that the judgment of the Supreme Court of South Carolina denies to plaintiff in error the "equal protection of the laws" and deprives it of the "liberty of contract" guaranteed by the Constitution of the United States and the XIVth amendment thereto. What constitutes the "equal protection of the laws" and "liberty of contract" is not defined in the XIVth amendment itself, but must be determined by reference to the general law of the land.

U. S. *v.* Wong Kim Ark, 169 U. S., 696.

The amendment seems to crystalize into the Constitution certain fundamental principles of Magna Charta and our own Declaration of Independence.

Brannon: "The Fourteenth Amendment," 315–320.

Wally's Heirs *v.* Kennedy, 2 Yerg (Tenn.), 554.

Corporations are entitled to "the equal protection of the laws."

Smith *v.* Ames, 169 U. S., 466.

We have already shown the transactions through which the defendant in error became a stockholder in the plaintiff in error by application for stock to the corporation at its corporate *situs* in the State of New York.

Ante, p. 3.

We have likewise shown that the contract of membership was a contract entered into under the

laws of New York, in the State of New York, with a New York corporation, and that defendant in error expressly agreed to assume all the burdens and obligations of a stockholder, and observe and be bound by the corporate articles and by-laws and the laws of the State of New York regulating the Eastern Building and Loan Association and like corporations of New York.

Ante, pp. 3, 8, 9.

We have also shown that by the fourteenth condition of the stock certificates issued to the defendant in error it was provided that "any action brought against this association shall be commenced within six months after filing proofs and *in the County of Onondaga and State of New York.*"

Transcript, p. 26, Stock Certificate, condition "Fourteenth."

On this state of facts, and under these articles of incorporation and by-laws, defendant in error, for a period of seventy-eight months paid to plaintiff in error the sum of seventy-five cents per month on each of his shares of stock. This amounted in the aggregate to $58.50 paid in by him upon each share of stock, or total payments upon his twenty-five shares of but $1,462.50. There had been some profits earned by the Association at the expiration of the seventy-eight months' period, and it appears that the book value of the stock at that time (*i. e.*, the amount paid in upon it plus profits) was $1,6[illegible]0.47.

Transcript, p. 42; Evidence of Nathan C. Visscher.

At the expiration of the seventy-eight months' period, notwithstanding the fact that he was a borrowing member and his stock certificates were pledged to the Association in New York, and notwithstanding that he had contracted not to sue the Association upon the stock certificates except in

the County of Onondaga and State of New York, and notwithstanding the fact that his stock had not "matured," defendant in error demanded from the Association the payment to him of the full par value of his stock. The Association was compelled to refuse payment, because under the laws of New York and its Articles of Incorporation and By-Laws, it was forbidden to pay to its stockholders more than the amount paid in upon their stock with the *pro rata* net earnings thereof.

This suit was then instituted by the defendant in error against the plaintiff in error to recover upon the stock certificates, and upon the trial, as we have already seen, the plaintiff in error, as defendant below, gave in evidence and duly proved the Articles of Incorporation and By-Laws of the corporation, the application for stock and stock certificates of defendant in error, the "public acts" of New York under which plaintiff in error was incorporated and which enter into and form a part of its contracts with its members, and the "judicial proceedings" of the courts of New York determining the meaning and effect of these "public acts" and adjudging the *status* of members in corporations organized under said laws in cases like the one at bar.

Ante, pp. 2–9.

On this state of the record, we insist that the decision and judgment of the Supreme Court of South Carolina denied to plaintiff in error "the equal protection of the laws" within the true meaning and intent of the XIVth Amendment.

Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 336, 391.

The refusal of the Supreme Court of South Carolina to enforce the corporate articles and to recognize the validity of the statutes of New York forming an integral part of the contract of membership between the defendant in error and plaintiff in error,

was in and of itself a denial of "the equal protection of the laws" to plaintiff in error, and a discrimination in favor of defendant in error because of his citizenship in South Carolina that violates the principles of the Fourteenth Amendment.

Brannon, "The Fourteenth Amendment," 97, 98.
Barbier *v.* Connolly, 113 U. S., 27.
Blake *v.* McClung, 172 U. S., 239, 247.
Blake *v.* McClung, 176 U. S., 59, 63, 65, 68.
Sully *v.* Am. Nat. Bk., 178 U. S., 289, 303.
Belfast Sav. Bk. *v.* Stowe, 92 Fed. Rep., 102, 103, 104.

Williamson, by reason of his contract of membership, acquired vested contract rights which cannot be impaired, and may be enforced by him under the laws of New York.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227, 240.

Therefore, the Association had corresponding rights as against him, and the State of South Carolina cannot, by a judicial decision, discriminate in his favor, and at the same time deny validity to the laws of New York forming a part of the contract itself. This violates alike the "full faith and credit" clause of the Federal Constitution and the "equal protection of the laws" clause of the Fourteenth Amendment.

Sully *v.* Am. Nat. Bk., 178 U. S., 289, 303.

The several decisions we have already cited from the South Carolina reports show that the established rule in that State has been that contracts are to be enforced in South Carolina in accordance with the statutes and decisions of the jurisdiction where the contract was made and is to be performed.

Ante, p. 61.

Yet, in the case at bar, as in the Welling and Bonnoitt and Ebaugh cases, the Supreme Court of South Carolina refuse to apply this established rule upon the express ground that it might result in injury to one of the citizens of South Carolina as between himself and a corporation of New York. This is equivalent to an express denial of the "equal protection of the laws" as between the stockholders of plaintiff in error resident in South Carolina and those resident in New York and other States, and as the corporation in this case represents all its stockholders, it seems clear that there has not only been a denial of the "equal protection of the laws" but likewise an absence "of due process of law."

"Carhart as a non-resident unsecured creditor * * * has the right to share in the distribution of the assets of the Carnegie Land Company upon the same level as like creditors of the company who are residents of the State of Tennessee, and as the decree below denies him that right, it must be reversed as to him for that reason."

Sully *v.* Am. National Bank, 178 U. S., 289, 303.

Certainly this principle fits the case at bar, because the effect of the judgment of the Supreme Court of South Carolina is to take the corporate funds belonging in equal ratio to all stockholders of the plaintiff in error and by "robbing Peter," who happens to live in New York or Virginia, "to pay Paul" merely because the latter lives in South Carolina. Surely such a doctrine as this cannot be countenanced by this Court.

In the *Ebaugh* case (185 U. S., 114) this Court refused to revise the judgment of the Supreme Court of South Carolina upon the ground that the facts found by a referee in the lower Court in relation to the laws of New York were binding upon this Court (185 U. S., 114). In the case at bar no such diffi-

culty exists, because, as we have already shown, the legal questions involved were raised as propositions of law in the trial Court by requests for instructions, which requests were denied by the Court as a matter of law. These requests for instructions presented squarely the question of the application of the "full faith and credit" clause of the Federal Constitution to the facts of this case. Therefore, the action of the trial Judge in expressly declining to charge that full faith and credit must be given to the laws of New York, and that this meant that the same effect must be given to those laws as would be given to them in the State of New York, is error of law, for which we think the judgment in this case must be reversed. In any event, it certainly requires this Court to finally determine whether the Public Acts of the State of New York, forming a part of the contract between the plaintiff in error and the defendant in error, are to be given the same force, meaning and effect in the courts of South Carolina that they have in the Courts of New York.

In a recent case, this Court said: "To state the result which must necessarily follow from a contrary deduction is sufficient of itself to demonstrate the unsoundness of the reasoning by which the non-Federal nature of the question can alone be upheld. For it is clear that if it be true that the bond given in a Federal court of equity on the granting of an injunction is not to be construed with reference to the rules of law applicable to such bonds in such court, then there can be no certain general rule by which to determine the liability of the obligors upon the bond. Their responsibility would be one thing in a court of the United States and a different thing in the courts of the various States, which would imply that the parties did not contract with reference to any definite rule of liability,"

Tullock *v.* Mulvane, 184 U. S., 497, 505.

This principle is directly applicable here, because if this Court fails to require "full faith and credit" to be given to the public acts of New York forming a part of the contract of corporate membership between the defendant in error and the plaintiff in error, it makes it possible for the contract to have one meaning and effect in the State of the corporate *situs* and a wholly different meaning and effect in other States, and this doctrine, once established, will wholly subvert the settled rule of law that the members of a corporation, no matter what the State of their residence, are bound by the laws of the State of the corporate *situs*, both as to their rights as stockholders and the rights of the corporation against them.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227.

Canada Southern Ry. *v.* Gebhard, 109 U. S., 527, 537.

Relfe *v.* Rundle, 103 U. S., 222, 225, 226.

Chase *v.* Curtis, 113 U. S., 452, 458.

3 Thompson on Corp., § 3046.

Daley *v.* People's B., L., etc., Assn., 172 Mass., 533; s. c., 52 N. E. Rep., 1090; Opinion by Holmes, *C. J.*

Nor can it be denied that the place of performance of a contract of stock subscription is at the corporate *situs*.

Penobscot, &c., R. Co. *v.* Bartlett, 12 Gray (Mass.), 244.

1 Thompson on Corp., § 1259.

3 Thompson on Corp., § 3046.

And it is likewise settled law that contracts must be construed by the law of the place of performance.

Coghlan *v.* South Carolina R. R. Co., 142 U. S., 101, 109, 110.

Pritchard *v.* Norton, 106 U. S., 124, 136.
Liverpool, &c., Co. *v.* Phœnix Ins. Co., 129 U. S., 397, 458.
Washington Central Bank *v.* Hume, 128 U. S., 195, 206, 207.

In the case at bar, the Supreme Court of the State of South Carolina has decided that the Statutes of New York and the certificate of incorporation and by-laws of the plaintiff in error are not a contract binding upon the defendant in error. This Court is not bound by a State court decision holding that not a contract which is shown to be such in accordance with the forms of law, and for the protection of the obligation of which the Federal Constitution has been invoked.

Jefferson Branch Bank *v.* Skelly, 1 Bl., 436, 443.
McCullough *v.* Virginia, 172 U. S., 102, 109.

In such cases, assuming that the constitutional provision has been properly invoked, this Court will determine the meaning and effect of the contract in accordance with the contract *situs*.

Sioux City R. Co. *v.* North American Tr. Co., 173 U. S., 99, 100.

This Court held in the *Bedford* case that while conditions upon which foreign corporations may do business in any State are a matter of State regulation, yet under this power a State cannot discharge citizens of such State from their contract obligations made and performable in another State. Can a State, by a Supreme Court decision, do what it would not be permitted to accomplish by legislative action?

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 228.

The decision of the Supreme Court of South Carolina, in the case at bar, denies to plaintiff in error, all remedies upon its contract with the defendant in error as a stockholder, and refuses to hold him to his obligations as such. It releases him from his obligation, as a borrowing member not to withdraw his stock, and establishes a new contract between the parties in direct violation of the express provisions of the statute law of New York. No State can so deny the enforcement within its jurisdiction of valid contracts under the law of a sister State.

Edwards *v.* Kearzey, 96 U. S., 595, 600, 601.
The Homestead Cases, 22 Gratt., (Va.), 266; s. c. 12. Am. Rep., 507, 514, 515.
White *v.* Hard, 13 Wall., 646, 654.
Cæsar *v.* Cappell, 83 Fed. Rep., 403.
Eastern B. & L. Assn. *v.* Bedford, 88 Fed. Rep., 7.
Allgeyer *v.* Louisiana, 165 U. S., 578.

"Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof whenever those rights are involved in any suit or proceeding before them," and "if they fail therein and withhold or deny rights, privileges or immunities secured by the Constitution of the United States, the party aggrieved may bring the case from the highest court of the State in which the question can be decided to this Court for final and conclusive determination."

In re Wood, 140 U. S., 278, 286.
Robb *v.* Connolly, 11 U. S., 624, 627.
Neal *v.* Delaware, 103 U. S., 370, 386, 387.

It is for this Court to say, and it is its duty under the Constitution to determine, whether in the de-

cision in the case at bar the Supreme Court of South Carolina gave to the laws of New York, and the contract made under those laws, the same effect that such laws and contract have in the courts of New York.

Green *v.* Van Buskirk, 5 Wall., 307, 311, 314.
Christmas *v.* Russell, 5 Wall., 290, 302.
Mills *v.* Duryee, 7 Cr., 481, 483, 484.
Carpenter *v.* Strange, 141 U. S., 87, 103.
Dupasseur *v.* Rochereau, 21 Wall., 130, 139.
Huntington *v.* Attrill, 146 U. S. 657, 666.
Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 624.
Chicago, &c., R. Co. *v.* Stevens, 174 U. S., 710.

"It was insisted on the one side, and denied on the other, that the faith and credit which the judicial proceedings in the courts of the State of Illinois had by law and usage in that State, were denied to them by the Supreme Court of New York in the decision which was rendered.

"Whether this was so or not could only be properly considered when the case came to be heard on its merits; but this Court, in denial of the motion to dismiss, held that the Supreme Court of New York necessarily decided *what* effect the attachment proceedings in Illinois had by the law and usage in that State; and as it decided against the effect which Green claimed for them, this Court had jurisdiction under the clause of the Constitution which declares 'that full faith and credit shall be given in each State to the public acts, records and judicial proceedings in every other State,' and the Act of Congress of 1790, which gives to those proceedings the same faith and credit in other States that they have in the State in which they were rendered."

Green *v.* VanBuskirk, 7 Wall., 139, 145.

In the light of the principles stated and the authorities cited in the foregoing brief and argument, we ask that the judgment of the Supreme Court of South Carolina in this case be reversed; and that this Court finally establish the Constitutional rule, that full faith and credit must be given by the courts of one State to the statutes of another State and to the judicial decisions of that State determining the effect of such statutes as integral parts of the charter of a corporation organized under the laws of that State. Not to hold this is to destroy the "liberty of contract" as between citizens of different States and to permit a State in its courts to refuse to enforce a contract against one of its citizens valid under the laws of the State where it was made and is to be performed. It seems to us that the Federal Constitutional provision was intended to prevent such injustice as this and with the hope that this Court will declare what was once a rule of comity to be now a rule of constitutional obligation we most respectfully submit this case.

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